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**ASSESSMENT OF THE QUALITY OF
CONTRACT TRANSLATIONS**

por


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*To my parents, Antonio and Lygia, in memoriam,
who from an early age awakened in me a love
for books.*

To Livia and Cecilia, with love.

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ABSTRACT

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This dissertation focuses on the assessment of the quality of contract translations. With that aim, Juliane House's assessment model was chosen. The model and underlying theories are described. The model is then applied to two contracts and three translations of each contract. Each translation text is compared to its corresponding source text, and the equivalence problems found are described. Further, some conclusions are drawn about the applicability of Juliane House's model to the assessment of contract translations. Finally, some suggestions for further research in this area of translation studies are provided.

RESUMO

Esta dissertação aborda a questão da avaliação de traduções de contratos. Para tanto, foi escolhido o modelo proposto por Juliane House. Descreve-se este modelo e teorias subjacentes. Procede-se, então, à aplicação do modelo a dois contratos e três traduções para cada contrato. Cada texto traduzido é confrontado com o respectivo texto-fonte e os problemas de equivalência encontrados são descritos. A seguir, são apresentadas conclusões acerca da aplicabilidade do modelo de Juliane House para a avaliação de traduções de contratos. Finalmente, são também apresentadas algumas sugestões para futuras pesquisas nesta área dos estudos sobre tradução.

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INTRODUCTION

Working in the capacity of a Certified Translator, I have been asked several times to give statements attesting to the quality of the translation of legal contracts, so that the translated version from the English into the Portuguese language could be registered with the appropriate Corporate Registrar's Office. Though this request has been put to me several times, only once could I attest to the quality of the translation, and even in that case the statement was given with reservations.

The fact that the translations submitted to me were never good enough for official uses because they presented several problems puzzled me, especially because the contracts were translated by persons who seemed to have a good command of both languages involved, and in some cases even a reasonable command of the legal language used. I then became interested in investigating what made those translations *bad translations*.

In addition, I wanted to have some linguistic parameters that could help me justify my denial in giving those statements of quality because in some cases my clients were convinced that their translations were *good* ones.

Hence, I set out to search for linguistic parameters that could be used to explain the problems found in the translations submitted to me, which in many cases were not problems relating to easily identifiable errors of denotative meaning. That is how this study began.

At the present stage of research about the subject, the only study that could be found aiming specifically at establishing parameters for the assessment of the quality of a translation text is Juliane House's *A Model for Translation Quality Assessment* (1981).

According to House's model, the evaluation of the quality of a translation text (TT) must not start with the analysis of how good or bad a TT *seems to be*. Instead, in order to assess the quality of a TT it is first necessary to perform an analysis of its source text (ST) in terms of its ideational and interpersonal functions (Halliday and Hasan, 1990). From this analysis, it is possible to obtain a *textual profile* of the ST, which characterizes its functions.

The translation text is analyzed in the same manner, and the profiles of the ST and the TT are then compared. The degree to which the TT matches or does not match the ST's profile, gives us an idea of the extent to which the TT can be considered a *good* or *bad* translation of the ST.

This model has been used with a variety of text types by House (1981). In addition, Rodrigues (1985) applied it to Portuguese translations of a scientific text, a newspaper article, a political speech and a comic strip. However, to my knowledge this model has not been applied to the evaluation of the translation of contracts or even any other legal texts, or to different translations of the same source text.

Therefore, the main purpose of this study is to test the applicability of the model proposed by House to the translation of contracts in the English-Portuguese language pair, in order to attempt to determine if the parameters established by House could help identify errors and inadequacies in the translation of those documents. A second purpose of this study is to verify the usefulness of the model in the assessment of different

translations of the same ST.

The methodology used by House will be utilized in this dissertation exactly as prescribed by her, and breaches of equivalence found in the translation texts will be classified into *covertly erroneous errors* and *overtly erroneous errors*, as done by House (1981:56-7).

It seems to be an especially opportune moment for this topic since with the ever increasing development of commercial relations between countries, professional translators are frequently hired to translate the contracts which will govern these relations. Yet, it has been noticed that the study of the translation of contracts constitutes a gap in the research carried out about the translation of legal documents.

In addition, as there seem to be few studies which are directly or indirectly concerned with investigating translation quality assessment from a theoretical standpoint, studies dealing with this topic seem to be necessary for the improvement of translation theory in general.

This dissertation has been divided into three chapters. After these initial considerations, Chapter I reviews the previous studies on translation quality assessment. Chapter II provides a description of House's model in order to establish the theoretical basis on which this research stands. Chapter III begins with some considerations on the criteria for the application of House's model to the *corpus* of this research. The remainder of the chapter is entirely devoted to the application of House's model to the analysis of the contracts chosen.

Finally, some conclusions are drawn from the application of House's model. It is

expected that the application of her model will prove that the model is useful in identifying and explaining the errors and inadequacies found in the translation of contracts from English into Portuguese.

Furthermore, it is expected that the application of House's model will also prove it to be useful in the comparison of different translated versions of the same source text, thus helping translators in their often difficult task of assessing the quality of translation texts.

CHAPTER I

REVIEW OF THE LITERATURE

In this chapter, I first give an overview of what has been written about the translation of legal documents and translation quality assessment in general. I then briefly present Juliane House's description of the evolution of translation quality assessment in this century, as stated in her book *A Model For Translation Quality Assessment* (1981). The importance of including House's review of earlier studies on translation quality assessment is that, in addition to providing a didactic and well-organized review of the literature on the matter, her review also helps to understand that because previous studies did not establish guidelines for the assessment of translation quality, House was led to develop a model for that purpose. As House's work will be constantly cited in all the chapters of this dissertation, any reference to her work shall be understood as a reference to the above mentioned book, and only the page number will be provided.

Much has been written about translation theory and practice. However, anyone interested in learning about the translation of legal documents would have enormous difficulty in finding texts on the topic. For instance, one can find a great deal of information about literary translation in Coulthard (1991), Theodor (1986), and Bassnett-McGuire (1980). The translation of scientific texts was also studied by a number of authors, such as Fraenkel (1984) and Maillot (1975). The translation of

the Bible has received much attention in Kassuhlke (1976) and Nida (1982).

Moreover, technical translations have been studied in Portinho (1983), and briefly dealt with in Newmark (1981). However, not a single study was found in which the translation of legal documents was analyzed, let alone the translation of legal contracts in particular.

This lack of guidelines that would help translators working with legal documents and contracts in particular, becomes important when one has to evaluate translations of such texts by different translators. How can such an assessment be made if there are no theoretical references or practical guidelines for the translation of these texts or for the evaluation of legal translations? It seems the correct procedure would be to try to work with general theories of assessment. But even in doing so, the evaluator is likely to have problems because little has been written about the topic, which is called Translation Criticism (Hewson, 1991; Newmark, 1981) and Translation Quality Assessment (House, 1981).

Many authors do not even address the issue of translation quality assessment. For instance, nothing is said about the evaluation of translations in Hatim and Mason (1990), nor in Brislin (1976). The topic is not dealt with in Catford's (1965) well-known work, or in any of the articles in Ladmiral's book (1972).

Other authors only talk briefly about translation assessment. For instance, in the introduction of her book, Bassnett-McGuire (1980:9) reinforces the importance of this topic and claims that "there is no universal canon according to which texts may be assessed". She goes on saying that in order to assess a translation one has to take into account the process of creating the translation, as well as its function. However, the

topic is not further explored because the author is not concerned with proposing any personal theory, but only studying the basics of translation theory, as Bassnett-McGuire emphasizes.

No study deals specifically with translation quality assessment in Coulthard and Caldas-Coulthard's (1991) collection of articles on translation theory and practice. In this book, Vasconcellos' article (p. 55-78) on machine translation deals briefly with the topic and asserts that the objective of the translation is a key point to be observed when judging the quality of any translation. She concludes that "there is no 'correct' way to evaluate machine translation" (p. 70 - my translation).

Furthermore, the topic is alluded to in Newmark (1981:182), but no model for assessing translation quality is provided. Instead, the author comes up with procedures for translation criticism, which seem too vague to serve as the basis for any definite evaluation of somebody else's work. For instance, the first procedure would include an analysis of, among other items, the intention, tone, syntactic and lexical style, and cultural features of the source text. However, the author does not limit the extension of such analysis, nor does he explain how it is supposed to be done.

In addition, in this first procedure, the translation evaluator would also "propose an appropriate translation method" (Newmark, 1981:182). This suggestion raises the question about the usefulness of proposing a translation method when what the translation evaluator is doing is precisely to assess a translation that has already been made.

Newmark's other procedures for translation criticism, in brief, are to compare source and translation texts; to assess the differences between the two; and to evaluate

the translation. Newmark's procedures for translation criticism do not seem very useful, except for his suggestion that the evaluation process should start with an analysis of the source text.

In Brazil, several publications deal with translation. However, to my knowledge, no author has written specifically about the subject or proposed any method for the assessment of translation quality.

After reviewing the studies mentioned above, one impression stood out: none of them seemed to be useful in assessing the quality of contract translations. However, one study seemed to provide useful and workable guidelines for the assessment of such translations: Juliane House's *A Model for Translation Quality Assessment*. Due to the importance of her work for this dissertation, it will be discussed in the following chapter as I look more closely at her model.

There follows, then, a brief account of the evolution of research on translation quality assessment, as reviewed by House. As I mentioned at the beginning of this chapter, the insufficiency of previous attempts to establish guidelines on how to evaluate the quality of a translation has led House to develop her own model of translation quality assessment. As I could not have access to some of the studies mentioned below, these studies will be summarized taking House's perspective into consideration. Therefore, in general I avoid giving my own personal view of such studies, though some remarks made seemed to have been necessary.

In the introduction of her book, House claims that the debate about translation quality has been dominated through the past two centuries by two paradoxical principles attributed to Cicero: "A translation should be free"; "A translation should be literal"

(p. 2). These two principles are considered by House as "too general and elusive" (p. 2) to be used in the evaluation of a translation text.

After this consideration, House reviews what has been written on the evaluation of translations. She divides such studies into three periods: Pre-Linguistic Studies; Response-based, Psycholinguistic Studies; and Source-Text based Studies. These periods will be briefly presented below.

Throughout the phase of Pre-Linguistic Studies, the assessment of translations was done in an "anecdotal and largely subjective manner" (p. 5). Two of the criteria used were: "faithfulness to the original" and "retention of the original's specific flavor" (p. 6). Savory (apud House, p. 6) states that "The most satisfying translations are made by those whose personalities are in tune with those of the writers and also those of the readers." This statement is a good example of the subjective value judgment involved in evaluating translations at that time, and of the vagueness with which the topic was considered. It seems clear that translation evaluators would not find theoretical support in such studies.

The second period, called Response-based, Psycholinguistic Studies is characterized by an attempt to link translation quality to the effect a translation is supposed to elicit in its reader. Therefore, according to Forster (apud House, p. 8) a good translation is "one which fulfills the same purpose in the new language as the original did." The studies of this period are considered very broad by House since the comparison of responses is done in an arbitrary way.

House also criticizes Nida's (apud House, p. 8) response-based criteria for judging translations, saying that they are "equally programmatic and general." They are:

"1. General efficiency of the communication process." Nida himself explains that this means "the maximum reception for the minimal effort of decoding;" "2. comprehension of intent." This criterion is represented by an accurate rendering of the meaning expressed in the source language message, in the translation text. This can be evaluated by the degree to which the text can be comprehended in the receptor culture; "3. equivalence of response." According to House (p. 9), this criterion is related to Nida's principle of "Dynamic Equivalence of a Translation," that is, the response given by the receptors of the translation text should be equivalent to the response given by the receptors of the source text. House argues that it is certainly expected that a translation produce an equivalent response, the problem being of how to test it empirically. If it cannot be tested, it becomes a useless criterion.

Later on, Nida and Taber (1982:173) postulate similar criteria for testing the quality of a translation, which according to House offer a rewording and a reordering of the criteria mentioned in the above paragraph:

1. The correctness with which the receptors understand the message of the original...;
2. the ease of comprehension, and
3. the involvement a person experiences as the result of the adequacy of the form of the translation (p. 173).

House also criticizes these criteria, and affirms that they should be further explained and tested.

House then examines some experimental studies which have attempted to operationalize the response-based criteria of translation evaluation. She starts with Nida and Taber's (1982:169) suggestions of practical tests for assessing translation quality. The first test uses the Cloze technique, which is based on the *degree of*

predictability. According to this technique, every fifth word is deleted and the reader has to fill in the blanks by guessing the right word. The larger the number of correct guesses s/he makes, the easier it is to read the text. House (p. 11) suggests some obvious limitations to this technique. The first one is that it would be extremely difficult to conclude why the readers made incorrect guesses. According to House, the answer to this question would be fundamental to making any statement on translation quality.

The second limitation for the use of the Cloze technique according to House, would be that it only measures ease of comprehension, which is not synonymous with overall translation quality.

The third limitation would be that this type of test can only be used for comparative judgment. This means that a translation can be considered better than the others because it shows a higher *degree of predictability*, which does not mean this translation achieves the intelligibility profile that is expected from an optimal translation of a specific source text. Besides, as House puts it, one should consider that having a higher predictability rate cannot necessarily mean a translation is better because the source text itself can have a low predictability rate.

Nida and Taber (1982:169), also suggest that the Cloze technique can be applied orally, that is, every tenth word would be substituted by the word "blank" while someone was reading the text. This technique is not commented by House, whose study was published before the 1982 edition of Nida and Taber's book. It seems intuitively true that the use of such technique would be impractical for the simple reason that a momentary lack of concentration would jeopardize the listener's guess. In addition, since

the authors propose that fifty blanks in any test would suffice to provide a guide as to the comprehensibility of the text, one wonders how it would be possible to keep a group of persons (as it is suggested) *tuned in* for such a long time. Maybe the last guesses would be no more than *wild guesses*, which would not help in assessing the quality of the translation.

The second test suggested by Nida and Taber (1982:171) is to measure the respondents' reactions to several translation alternatives. The respondents would be presented with different versions of a sentence and asked such questions as: "Which way sounds the sweetest?", "Which is plainer?". Many aspects are presented by House as evidence of the inappropriateness of this test, such as: how can respondents be sure the alternative they choose is the best, if they are not introduced to the source text? All of them can be "inadequate." Besides, how can one control such variables as personal taste and preferences? As House points out, the reliability of such a test would be questionable.

Nida and Taber (1982:171) suggest a third test for translation quality. According to this test, a translation would be read to someone who would then explain its contents to people who were not present at the first reading of the text. House criticizes this technique saying that it only gives a *précis* of the translation and that it relies entirely on the individual. We can add that this last feature would not reveal, as Nida and Taber (1982:171-2) expected, "how well the meaning comes across", but how well the meaning is perceived and passed on by the respondent.

The last test reviewed by House, and the one which is considered by Nida and Taber "one of the best tests of a translation" (1982:172) is to have several people

read the text aloud before an audience. The places at which two or more readers had difficulties in reading fluently, that is they stumbled, hesitated or made substitutions, would be an indication of a possible translation problem. The drawbacks of such a test are pointed out by House: the readers may have different knowledge of the subject, or they may have different oral presentation competence. Another aspect presented by House is that "one would also need to know how the source text would be read orally in order to make a comparison" (p. 14).

Finally, House criticizes all the tests mentioned above saying that it is an unwarranted assumption that greater ease of comprehension equals "better translation" and that "the tests suffer from the relativity of any judgment that lacks a norm (which could be provided by the source text)" (p. 15).

Still another test of translation quality is presented by Nida and Taber (1982), which is not considered by House. They claim that "only the actual publication of the sample materials can provide the kind of test necessary to judge the acceptability of a translation" (p. 172). However, the authors themselves recognize that the popularity of a translation may be due to several aspects other than its quality, such as attractive format, reasonable price, illustrations, etc.

Nida and Taber go on to say that "the ultimate judgment of a translation must be calculated in terms of reader hours per copy, not extent of distribution" (1982:172). It seems that both criteria are not valid for assessing the quality of a translation. Large sales of a book do not mean people are going to read it and even if they do, this has nothing to do with the quality of the translation. Moreover, "reader hours per copy" seems to be a nonsensical criterion which is impossible to measure,

and even if it were possible, what does the number of readership hours have to do with the quality of what is being read? All of us most probably know of some authors who have their books on the top ten best-seller lists and who write poorly. How could a large readership guarantee the quality of a translation if the readers did not have any contact with the source text?

Nida and Taber also link the quality of the published material to the degree of involvement the reader shows when reading a translation. According to the authors (1982:173), questions such as "How long does he read it before putting it down?" and "Does his face show real interest and understanding ...?" should be asked to evaluate such degree of involvement. Again Nida and Taber propose questions whose answers do not lead to conclusive results. It seems clear that these testing procedures do not throw any new light on the matter.

In spite of Nida and Taber's recognized effort to establish parameters for translation quality assessment, it seems to be correct to affirm that the testing procedures suggested by those authors do not constitute a reliable basis for the evaluation of translations, as neither seem to do the other response-based experimental methods described below.

Miller and Beebe-Center (apud House, p. 15) suggest the following response-based methods of translation quality assessment. According to the first method, one would ask the opinion of several competent judges as to the quality of the translation. House supports such a method, provided that there is a previous detailed analysis of the source text. She highlights the point that it is not the judges who pass judgment on translation quality, but it is the questions that contain the evaluation

criteria. So, as House points out, it is important to know which questions to ask (p. 16).

The second method suggests that translations should be tested against a *criterion translation*, that is, a translation of *grand excellence* (p. 15). House calls our attention to the fact that, even assuming that such translation exists, the problem is still to establish reliable criteria which would serve as the basis for identifying a *criterion translation*. Developing such criteria would be a problem similar to developing criteria for the assessment of any translation.

Miller and Beebe-Center (apud House, p. 15) propose a third method for assessing translation quality, which according to House has also been suggested by Macnamara (apud House, p. 15). Respondents would answer questions about either the source text or the translation text, depending on which they had been exposed to. If the answers were equivalent, then source and translation texts were to be considered equivalent. House considers this test a "very rough test of intelligibility of a translation" (p. 17). Again, she claims that a detailed analysis of the source text should provide the basis for the construction of the questions to be asked. I would add that such a test seems to depend too largely upon subjective, non-verifiable means.

A similar test is also proposed by Miller and Beebe-Center (apud House, p. 17), the difference being that instead of answering questions, participants would perform bodily responses to source or target language instructions. If they performed similar bodily movements, the texts would be considered equivalent. As House points out, the use of this test is "obviously limited to material that can be examined through bodily movements" (p. 17).

House then describes an experiment carried out by Carroll (apud House, p. 17), in

which isolated sentences were taken from three human translations and from three mechanical translations of passages from a Russian work on cybernetics. The sentences were compared with a *criterion translation* and with the original, by two different groups: one formed by native speakers of English with no knowledge of Russian, but with high verbal intelligence and scientific knowledge, who worked with the *criterion translation*; the second group was formed by native English speakers who could read fluently in Russian, and therefore worked with the source text. Two rating scales were used: intelligibility and informativeness. According to House, the fact that isolated sentences were used reduced the judge's use of context, which shows total disregard for the importance of both contextual and co-textual aspects of meaning, and also for the fact that practicing translators most frequently deal with texts. In addition, despite the fact that Carroll's method could be useful in determining differences between human and mechanic translations and for evaluating a translation in terms of intelligibility and informativeness, according to House this is not all that can be done when evaluating a translation, and some more subtle stylistic differences between source and translation texts would remain unrevealed.

House affirms that a common weakness in these experiments is the fact that the source text is rarely used as the reference for the comparison between source and translation texts. Instead, the quality of a translation is measured only by reference to the text which is translated. In House's opinion, a method should be developed which would determine the "semantic, stylistic, functional, and pragmatic qualities of the source text" (p. 20), and similar qualities would be searched in the translation text.

The third period in House's categorization of the state-of-the-art in translation quality assessment is called Source-Text based Studies. When characterizing

this period, she reviews some studies that propose the necessity of an analysis of the source text prior to any evaluation of a translation text. She starts with Wilss (apud House, p. 21), who suggests that a model for the detailed description of the source text be developed and used for the evaluation of the correspondent translation. Wilss (apud House, p. 21) also suggests that "the norm of usage in a given language community" be used as the yardstick by which to judge whether or not a translation is adequate. House presents the following limitations to this model: the translator, as a participant in a creative process, will always have freedom of choice between several legitimate possibilities within the norm of usage. Also, she describes as optimistic the notion of the existence of a norm in the source culture for a particular text and even more optimistic the existence of a norm for this particular text inside the target culture.

House then describes two models that in her opinion consist only of general outlines, without any demonstration of how they can be operationalized: Koller's and Reiss' models. Koller's (apud House, p. 22) model has three main stages:

1. source text criticism with a view to transferability into the target language;
2. Translation comparison in which the particular methods of translation used in the production of the given translation text are described; and
3. evaluation of the translation, not according to vague, general criteria such as 'good' or 'highly intelligible', etc., but according to 'adequate' or 'not adequate' given the text-specific features derived in 1, and measured against the native speaker's faculty for meta-linguistic judgments.

Reiss (apud House, p. 22) believes that it is necessary to determine the function and the textual type of the source text before deciding on the quality of a translation. Reiss uses Bühler's (apud House, p. 23) functions of language to classify texts, as follows: 1. content-oriented texts, such as news and scientific-technical texts; 2. form-

oriented texts, such as poems and other literary works; and 3. conative texts, such as advertisements. Reiss suggests a fourth type of text: texts involving other media than print, such as songs, operas, etc., which would require different rules of translation.

According to Reiss, an adequate translation would maintain these textual types so that a content-oriented text would be translated with invariance on the content plane as the primary consideration; form-oriented texts would seek invariance on content and expression planes; and in conative texts, an 'effect' similar to that produced by the source text should prevail. House believes that Reiss' ideas are potentially useful, the main problem being that her model does not indicate precisely how to establish textual function and textual type in the analysis of the source text.

After reviewing all these proposals, House sets out to develop a model which would present concrete suggestions on how to analyze the source text and make up a profile of it, analyze the translation text using the same parameters, then compare both, and finally decide on the quality of the translation text. Such a model will be further explained in the next chapter.

CHAPTER II

JULIANE HOUSE'S MODEL

The purpose of this chapter is to provide a brief description of Juliane House's model for translation quality assessment. The chapter will be divided into three sections. The first section will focus on the theoretical basis on which House's model is developed, and will also cover the model itself. The second section will describe how the model is to be utilized in the analysis and comparison of source texts and translation texts. Finally, in the third section, I shall examine some theoretical consequences of the application of the model which lead to a modification of her initially proposed model, as presented by House. It seems important to mention that, as in the previous chapter, the theoretical aspects which will be discussed here will be done so not as I see them, but as House does, as it was her perception of these aspects which formed the basis for her model.

2.1. MODEL FOR TRANSLATION QUALITY ASSESSMENT

After asserting that pre-linguistic studies and response-based studies only present vague proposals for the assessment of translation quality, which cannot be empirically tested, House also criticizes source text-based studies because although they are potentially useful, they do not establish a model for solving the problems of translation quality assessment.

Hence, it is her purpose to develop a practical, workable model for a coherent analysis of both source and translation texts, which would result in objective

statements about the relative match of the two texts, and in the characterization of the quality of the translation carried out.

She starts by saying that it is necessary to be precise as to what she means by *Translation*. She affirms that it is the essence of translation that meaning be preserved across the two languages involved. In her opinion, meaning has three basic aspects: a semantic aspect, a pragmatic aspect and a textual aspect.

By *semantic aspect* of meaning, House understands "the relationship of reference or denotation, i.e., the relationship of linguistic units or symbols to their referents in some possible world" (p. 25). She explains that the expression *possible world* is used because some terms have no correspondents in the real world, yet they can produce semantically meaningful utterances. She exemplifies with terms relating to science fiction.

According to House, the fact that the semantic aspect of meaning is easily accessible and can be seen to be present or absent in translation, has contributed to the preference it has been given in many earlier studies.

To explain the *pragmatic aspect* of meaning, the author draws on the theories of speech acts initially formulated by Austin (apud House, 1981:27) and Searle (ibid, p. 27). According to House,

pragmatic meaning is here referred to as the illocutionary force that an utterance is said to have, i.e., the particular use of an expression on a specific occasion (p. 27).

House points out that the illocutionary force of an utterance can be traced in grammatical features such as word order, mood of the verb, or the presence of

performative verbs, as they are defined in Austin (apud House, 1981:27). However, the illocutionary force of an utterance is only made unambiguously clear by the context in which it is used.

According to House, such considerations about the illocutionary force of an utterance are of great importance for translation because translation deals with language in use, that is, instances of speech acts, or utterances. House goes on to say that "in translation, it is always necessary to aim at equivalence of pragmatic meaning, if necessary at the expense of semantic equivalence" (p. 28). Thus, it seems correct to add that when translated into another language sentences should have their illocutionary force maintained in the translation text.

The third aspect of meaning, that is, the *textual aspect* has been neglected by most translation theoreticians and practitioners, according to House. However, as she points out, the textual aspect of meaning has been emphasized by Catford (apud House, 1981:28) and Gleason (ibid, p.28). House understands a text "as any stretch of language in which the individual components all relate to one another and form a cohesive whole" (p. 29 cf. Dressler, 1972).

House emphasizes that the use of references such as substitutions, ellipses, anaphora, etc., make up the different ways of text constitution. According to House, such different ways "account for the textual meaning that should be kept equivalent in translation" (p. 29).

After these considerations and moving back to a definition of translation, the author states that

translation is the replacement of a text in the source language by a semantically and pragmatically equivalent text in the target language (p. 29-30).

House believes the concept of equivalence should be further developed. In her opinion, the equivalence sought must be an equivalence of function, that is, both the source and translation texts should present the *same* function. The text's function can only be made explicit through a detailed analysis of the text itself. She thinks that one of the problems with the other criteria for establishing equivalence is that they rely upon the writer's intention, an item which is not open to empirical investigation, or the reader's responses, which present problems to be measured. The text itself would then be the link between the writer's intention and the reader's response.

House affirms that the concept of the text's function has to be further explained because most authors tend to identify a text's function with language functions, which in turn are correlated with textual types. She then describes the language functions as developed by Ogden and Richards (apud House, 1981:31-32), Bühler (ibid, p. 32), Jakobson (ibid, p. 33), and Halliday (ibid, p. 34-35).

Based on the notions proposed by these authors, the predominant language function exhibited in a text is usually equated with the text's function, and then the textual function is used to characterize the textual type. House refutes such equation of language function and textual function and type, saying that it is too simplistic and "of no use in terms of determining precisely an individual text's function, let alone of establishing functional equivalence" (p. 36). Such text typology can, however, be used in the selection and classification of texts for analysis, and for labeling the texts' functional components. Hence, in her research House classifies the texts

she uses as "ideational" and "interpersonal" texts, in accordance with two of Halliday's (apud House, 1981:34) language functions.

House argues that "the function of a text is the application (cf. Lyons, 1969:434) or use which the text has in the particular context of a situation" (p. 37). Thus, each text specimen is an individual text embedded in a unique situation, and to characterize a text's function it is necessary to refer the text to the situation. To accomplish this, the notion of situation has to be broken down into specific situational dimensions.

To create her model of analysis and of comparison of source and translation texts, House utilizes the system of situational dimensions suggested by Crystal and Davy (apud House, 1981:38-41), which is described as follows:

A INDIVIDUALITY

DIALECT

TIME

B DISCOURSE

MEDIUM

PARTICIPATION

C PROVINCE

STATUS

MODALITY

SINGULARITY

In item A, *Individuality* is understood as the idiosyncratic features of language which can identify someone as a specific person, such as the person's handwriting or

certain words or phrases frequently used by the person.

The *Dialect* can be of two types: Regional dialect (those features evidencing a text producer's geographical origin) or social class dialect (a text producer's position on a social scale). The unmarked case of a regional dialect is the Standard American or the Standard British English. The unmarked case of a social class dialect is the educated middle class speaker of the standard language.

The item *Time* encompasses those features which provide clues to a text's temporal provenance.

In item B, the *Discourse* can be analyzed under two perspectives: Medium and Participation. *Medium* can be divided into: Complex medium (for example, texts which are "written to be spoken") or Simple medium (texts which are spoken to be heard or written to be read).

Participation can also be Complex, as when a text in spite of being produced by one person, contains features normally found in a dialog, such as imperative forms or question tags, or Simple, when those features do not apply.

In item C, the category *Province* refers to the professional activity of the language user, such as "the language of advertising", "the language of science", etc.

Status refers to the social position of the speaker/writer and listener/reader in terms of formality, respect, politeness, etc.

The category *Modality* covers the differences in the form and medium of communication, that is, for example, the differences between a report, an essay, or a letter. Modality can be considered correspondent to the concept traditionally

called "genre", a term avoided by Crystal and Davy (apud House, 1981:41) because it is used for broad categories as well as for finer distinctions between certain means of communication.

Singularity refers to personal idiosyncrasies which are deliberately introduced into a person's speech with the objective of achieving a specific linguistic effect.

Based on this model, House develops a model for situational-functional source text analysis. It first differs from Crystal and Davy's model because sections A, B, and C of these authors' model are collapsed into two broad sections: *Dimensions of Language User* and *Dimensions of Language Use*. Thus, House's model can be outlined as follows:

A. Dimensions of Language User

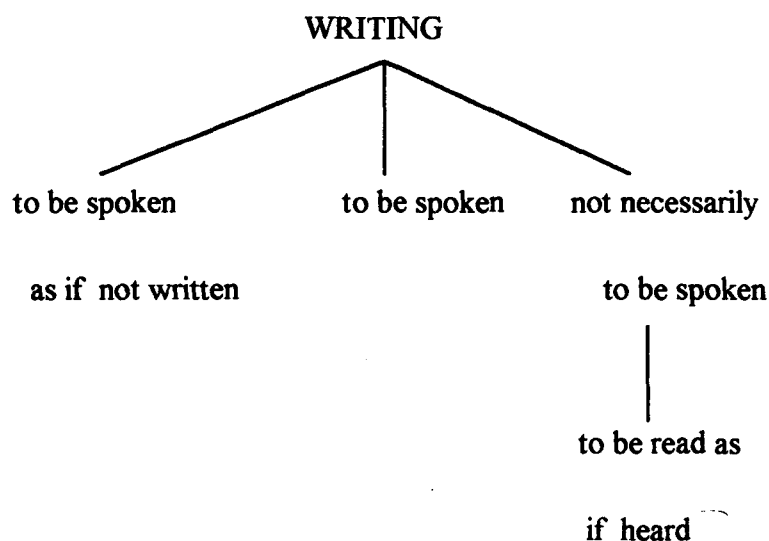
1. GEOGRAPHICAL ORIGIN
2. SOCIAL CLASS
3. TIME

B. Dimensions of Language Use

1. MEDIUM - Simple
Complex
2. PARTICIPATION - Simple
Complex
3. SOCIAL ROLE RELATIONSHIP
4. SOCIAL ATTITUDE
5. PROVINCE

In Item A, *Dimensions of Language User*, House creates two subcategories that correspond to Crystal and Davy's *Dialect*, besides the subcategory TIME. Hence, regional dialect receives the name GEOGRAPHICAL ORIGIN, while social class dialect is called SOCIAL CLASS. Both dimensions as well as the dimension *Time* take the same definitions as in Crystal and Davy's model. House further explains that the dimension *Individuality* is not reproduced in her model because it may be irrelevant in her work due to the small number of texts to be investigated, and also because the idiosyncratic features that characterize that dimension will be captured in the dimensions *Social Role Relationship*, *Social Attitude* and *Province*.

Item B, *Dimensions of Language Use*, comprises five subcategories from among those originally proposed by Crystal and Davy under items B and C. The first subcategory, MEDIUM, is also subdivided into *Simple* and *Complex*. House explains that in order to refine the category of *Complex Medium* she makes use of some of the classifications suggested by Gregory (apud House, 1981:43) related only to writing because she will be analyzing only written texts, as follows:



House affirms that these distinctions are necessary because even if a text is meant to be spoken, as the above mentioned *spoken* subcategories of the written mode, it is different from genuine spoken language. However, as pointed out by House, Gregory's classification is not enough, and she introduces some refinements to it later on in her book.

In order to determine the features of the spoken mode present in the manifestations of a *Complex Medium*, House draws on Soll's research (apud House, 1981:44). Soll describes several characteristics of spoken language such as structural simplicity, incompleteness of sentences, specific manner of text constitution, particular theme-rheme sequence, marked subjectivity, higher redundancy, etc. House sets out to examine whether and how far these characteristics are present in the *Complex Medium* categories found in the texts she analyzes.

The category PARTICIPATION, the second in House's model, is also divided into *Simple* and *Complex*. With the objective of refining Crystal and Davy's *Complex Participation*, House proposes to examine the forms of *participation elicitation* and *indirect addressee participation* expressed linguistically in the specific use of pronouns, switches between imperatives, interrogatives, exclamations, presence of contact parentheses, etc.

SOCIAL ROLE RELATIONSHIP is the third category in the *Dimensions of Language Use*. Together with the fourth dimension, *Social Attitude*, this dimension makes up the category called *Status* in Crystal and Davy's model. However, House does not present any reason for this subdivision.

The role relationships between addresser and addressee are focused on the *Social*

Role Relationship category. These relationships can be classified as *symmetrical* and *asymmetrical*. A *symmetrical* relationship evidences solidarity and equality between addresser and addressees; an *asymmetrical* role relationship is characterized by some kind of authority relationship between addresser and addressees.

House also distinguishes between two types of addresser's social role: "a relatively permanent position role (e.g. of teacher, priest, etc.) and the more transient situational role (e.g. of guest, visitor in a prison, etc.)" (p. 45). House explains that she has simplified the standard sociological division of roles proposed by interactionist role theory, as suggested by Dreitzel and Coburn-Staeger (apud House, 1981:45).

The fourth category, SOCIAL ATTITUDE, describes "the degrees of social distance or proximity" (p. 45). To do so, House adopts Joo's (apud House, 1981:45) five different styles or degrees of formality: frozen, formal, consultative, casual and intimate. She points out that there can be transitional styles, such as a consultative-casual style.

The *frozen style*, together with the intimate style, makes up the extreme of this gradation. It is "the most formal, pre-meditated, often 'literary' style level" (House, 1981:47). House adds that this style may also be used in business letters to express the social distance between addresser and addressee.

In the *formal style*, there is little evidence of the addressee's participation. "Formal texts are well-structured, elaborate, logically sequenced, and strongly cohesive. They clearly demonstrate advance planning" (p. 47).

The *consultative style* is the most neutral. It is the style used in conversations or

letters between strangers. It is characterized by the absence of formal or informal style markers. In consultative texts, the addresser does not assume that part of the message can be understood, but provides background information. In addition, the consultative style is characterized by the direct or implied addressee's participation.

The *casual style* is used among friends or with addressees with whom the addresser "has something to share" (p. 46). It is marked by inexplicitness, and by such markers as ellipses, contractions and lexical items marked [- formal].

Finally, the *intimate style* is that used between people who are very close to each other, and therefore background information does not need to be supplied.

In order to illustrate how the same message can be conveyed in these five styles, House quotes Steven (apud House, 1981:48):

"Frozen: Visitor should make their way at once to the upper floor
by way of the staircase.

Formal: Visitors should go upstairs at once.

Consultative: Would you mind going upstairs right away,
please.

Casual: Time you all went upstairs now!

Intimate: Up you go, chaps!"

The last dimension in the section *Dimensions of Language Use* is PROVINCE. House explains that in her model, *Province* comprises the dimensions *Province* and *Modality* in Crystal and Davy's model. This is done because the category *Modality* does not call for a separate dimension since it will remain the same in both source and

translation texts, that is, "a letter will be translated as a letter unless the translation text is a completely different version" (p. 48).

Differently from Crystal and Davy's model, House's *Province* does not refer only to the language user's occupation and professional activity, but also to "the field or topic of the text in its widest sense of 'area of operation' of the language activity, as well as details of the text production as far as these can be deduced from the text itself" (p. 48).

House explains that Crystal and Davy's dimension of *Singularity* is omitted in her model for the same reasons she omitted the dimension of *Individuality*.

House then affirms that the analysis of the situational dimensions outlined above leads to establishing the function of a text. This function can be determined by the linguistic evidence found in the text, which can be broken into three types: *syntactic*, *lexical* and *textual* evidence. These types of linguistic evidence will be further developed in item 2.2.1 of this chapter.

The principle for the functional match between source and translation texts is then refined by House, as follows:

a translation text should not only match its source text in function, but employ equivalent situational-dimensional means to achieve that function, i.e., for a translation of optimal quality it is desirable to have a match between source and translation text along the dimensions (p. 49).

As a result of the analysis using the situational dimensions described above, a textual profile is established for the source text. The translation text is then analyzed using the same dimensions and its textual profile is determined. The comparison of the two textual

profiles reveals the degree to which the translation text matches the source text, and is therefore adequate in quality. The methods for this comparison are described below.

2.2 ANALYSIS AND COMPARISON OF SOURCE AND TRANSLATION TEXTS

In seeking to demonstrate the practicality of her model of translation quality assessment, House describes how the model is to be utilized. She prescribes the use of a method of analysis and comparison of texts, as described in item 2.2.1 below, and the use of the evaluation scheme for the measurement of mismatches between source and translation texts presented in item 2.2.2.

2.2.1. Method of Analysis and Comparison of Texts

Prior to assessing the quality of a translation text, we must establish the source text's textual profile, against which the quality of the translation text is evaluated. In order to determine the source text's textual profile it is necessary to conduct a detailed analysis of the source text. For this analysis, in addition to using the situational dimensions previously outlined, House makes use of Quirk and Greenbaum's approach to grammar (apud House, 1981:52). She also utilizes symbols for expressing the components of meaning, such as [+ human] [- human], [+ abstract] [- abstract], etc., and rhetorical-stylistic concepts such as alliteration and anacoluthon.

In addition, other concepts are utilized such as those of illocutionary force (as mentioned earlier in this chapter), foregrounding and automatization. House explains that the last two concepts are used as described by Prague School linguists. Foregrounding is then described as "a linguistic device for making the reader conscious

of a particular linguistic form so that the linguistic form itself attracts attention and is felt to be unusual" (p. 52). House offers as examples cases of alliteration, assonance, onomatopoeia, puns and wordplays.

In contrast, automatization is described as the "conventional, normal use of the devices of language such that linguistic forms themselves do not attract attention" (p. 53).

When analyzing the situational dimensions outlined above, use will be made of *syntactic*, *lexical* and *textual means* of realizing particular situational features. House explains that the feature *graphical means* can be introduced in the case of a text under analysis having a graphic form that reflects *phonological distinctiveness*, such as "cum 'ere for come here" (p. 53).

House highlights the fact that her model takes into account of the use of textual devices, as opposed to Crystal and Davy's model described above, which has been criticized for only operating at the level of the linguistic elements constituting stretches of language, and for neglecting means of sentence connection, thematic movement, etc.

The guidelines used by House for the analysis of the *textual means* are found in the work of Enkvist (apud House, 1981:54) and Soll (ibid, p. 54). Enkvits's ideas are adapted by House and three main textual aspects emerge: theme-dynamics, clausal linkage and iconic linkage.

Theme-dynamics refers to the way themes recur in a text, that is, by repetition, anaphoric and cataphoric references, pro-forms, ellipsis, synonymy, and to theme-rheme

distribution.

House affirms that theme and rheme are the two basic parts of which any utterance is constituted, and which differ in the function they perform in carrying information. Theme is the part of an utterance which "refers to facts either taken to be universally known, taken for granted, or given from the context" (p. 54). On the other hand, rheme is the part which has the *new* information to be conveyed by the utterance. Theme and rheme are basically identified by the position they have in an utterance, since in the unmarked speech the theme precedes the rheme.

The second textual aspect taken from Enkvist's work, *clausal linkage*, refers to "basically logical relations between clauses and sentences in a text, e.g., additive, adversative, alternative, causal, explanatory, or illative relations" (p. 55).

Iconic linkage, the third textual aspect to be considered, is also called *structural parallelism*. It can be identified "when two or more sentences cohere because they are, at the surface level, isomorphic" (p. 55). House then exemplifies with the often cited sentences formulated by Chomsky, "John is easy to please" and "John is eager to please" (p.55).

As mentioned above, House also uses Soll's two basic types of text constitution in the analysis of the *textual means*. These basic types are referred to as emic texts and etic texts. *Emic* texts are "solely determined by text immanent criteria" (p. 55). *Etic* texts are "determined through text-transcending means, i.e., temporal, personal, or local deictics pointing to the various features of the situation enveloping the text, the addresser, and the addressees" (p. 55).

Besides using Enkvist's and Soll's concepts described above, other textual features such as overall logical structure, presence of narrative formulae, and presence (or lack of) redundancy are also considered by House in her analysis of the textual means.

Finally, House affirms that the method of analysis and comparison utilized also relied on a corpus of authentic texts, not on "pre-fabricated linguistic examples" (p 62), and on her native and near-native speaker intuition, as well as on the judgments of other native speakers. She explains that reliance on intuition "does not lead us back to pre-scientific methods ... because all the intuitive judgments presented in our investigation are argued, i.e., the analyst's judgments are taken as hypotheses which are being objectively validated by the reasons given for them" (p. 62).

House adds that until now, there is no scientifically exact and complete contrastive analysis of any language pair which details the system of potential equivalence relations between the two languages involved. These relations may be considered as non-absolute, but as falling on a scale of more or less equivalent items which run from more to less probable. The degree of this probability can only be judged by a subjective and hermeneutic element, i.e., the native speaker intuition, so that one can decide about the appropriateness of a linguistic item in a translation text.

House emphasizes that since translation is a hermeneutic process, human beings are important variables in this process, and consequently in translation assessment. She doubts translation assessment can ever be as objective as the results of natural sciences subjects.

2.2.2. Evaluation of Mismatches between Source and Translation Texts

According to House, there must be a dimensional and a functional match between source and translation texts. In the event that the source text's and the translation text's profiles do not match, there is an ERROR.

House describes two types of errors: those which result from a dimensional mismatch, and those which result from a non-dimensional mismatch.

Dimensional mismatches are also called *covertly erroneous errors*, and result from any mismatch along the situational dimensions. According to House, the characterization of a mismatch as a *covertly erroneous error* presupposes the three situations below, which apply to the language pair and to the *corpus* of her study, and which also seem to apply to the language pair and to the texts used in this dissertation:

- 1) that the cultural differences between source and translation language communities are not substantial, or in the event they are, explicit references are made in the translation text. House exemplifies with the cases of a national holiday or a national custom, which have to be made clear.

- 2) that the differences between the two languages involved in the translation process can be overcome in translation. House then hypothesizes that the languages with which she is working, English and German, have a similar deep structure, and that the low level differences can be overcome, and thus any direct equivalence is possible. She points out that any instance in which equivalence is impossible due to differences in the language systems is to be discussed individually and where it occurs.

3) that the translation texts under study do not include a secondary function, such as for example, translations for special addressees or for special purposes. House affirms that such translations are not defined by her as translations, but as versions of a source text.

It is thus assumed that both source text's and translation text's addressees basically form similar sub-groups in their respective language communities. These addressees are described as contemporary standard language speakers. House then defines standard language as "that supra-regional variety which is used by the educated middle-class speaker and which is the 'ideal norm', at the same time accepted by the majority of the whole language community" (p. 59-60). In her analysis she uses the Standard British English and the Standard American English as the unmarked forms of the English language.

Overtly erroneous errors, on the other hand, are those which result from a non-dimensional mismatch. According to House, they occur whenever there is a mistake in the denotative meanings of source and translation texts, or when there is a breach of the target language system.

House subdivides the cases where the denotative meanings have been changed by the translator into omissions, additions and substitutions, which may derive from wrong selections or wrong combinations of elements.

Breaches of the target language system are subdivided into: "(a) cases of ungrammaticality, i.e., clear breaches of the language system, and (b) cases of dubious acceptability, i.e., breaches of the 'norm of usage'" (p. 57). By *norm of usage* House understands "a bundle of linguistic rules which underlies the actual use of

language as opposed to the language system which is concerned with the possibilities of the language" (p. 57). These concepts will also be utilized in this dissertation.

House points out that *overtly erroneous errors* have been given much attention, but *covertly erroneous errors* have often been neglected because their evaluation requires a more subtle qualitative-descriptive analysis. She also emphasizes that the relative weighting of individual errors must be done taking each individual text into consideration.

House affirms that in order to make a qualitative assessment of a translation text, one must present the mismatches on the individual dimensions which account for the *covertly erroneous errors*, and for *the overtly erroneous errors*. It is also necessary to make a statement of the match or mismatch of each of the two functional components, that is, the ideational and the interpersonal components.

Finally, House explains that when presenting her analysis of the translation text, she will only mention the mismatches between source and translation texts. Thus, it may be assumed that the translation text is satisfactory on one dimension if no mismatches have been mentioned on that dimension. This procedure will also be used with the *corpus* of this dissertation.

It is worth mentioning that such classification does not include all of the inadequacies found in the texts analyzed. Thus, the following problems were identified and could not be included in the classification above: a) incorrect capitalization (E.g.: "Portuguesa", TT 1.1, line 133; "Direitos", TT 1.2, line 150); b) incorrect spelling (E.g.: "Brazil", TT 1.2, lines 7 and 26); "excessão" TT 1.2, line 150; "intitular-se", TT 2.1, line

142); c) incorrect hyphenation ("re-emitirão", TT 2.3, line 102; "re-examinado, TT 2.3, line 286). In addition, the analysis of the TTs also revealed mistakes which did not cause significant consequences to the understanding of the texts, but would make the reader double check what had just been read, such as the use of misplaced parenthesis (TT 1.1, line 10) and the use of (e), instead of (c) (TT 1.1, line 126). Such mistakes are not accounted for in House's classification.

2.3. THEORETICAL CONSEQUENCES OF HOUSE'S MODEL

As a result of the implementation of her model, House suggests that instead of establishing a text typology that would account for different types of translation equivalence relationships, it seems more useful to set up a translation typology. House criticizes the presupposition that "translation quality is somehow determined by the nature of the source text while the process of translation is itself a constant" (p. 188).

Hence, the question to be asked is not "what different kinds of source texts are we here handling?", but "what different kinds of translation types have our analyses revealed?" (p. 188). The translation evaluator would then verify if the type of translation used was the most adequate to the type of text under analysis.

House then establishes a translation typology which distinguishes between two translation types: *overt translations* and *covert translations*. An *overt translation* is one that is clearly a translation of a source text, that is, it is clearly not a *second original*. In this type of translation, TT addressees are not directly addressed. As House affirms, "ST is tied in a specific way to the source language community and culture" (p. 189), in spite of its potential interest to other communities.

An *overt translation* is required for two types of ST:

1) Historically-linked STs, that is, those which refer to a unique historic situation and address a specific audience. House exemplifies this type of text with the Political Speech found in her *corpus* of texts.

2) Timeless STs, that is, fictional texts that transcend a historical meaning and belong to the community's cultural products, as a work of art. An example of this type of text is the Comedy Dialogue found in House's study, which displays a marked geographical dialect that characterizes it as a culture-specific text.

Conversely, a *covert translation* produces a text that enjoys the status of an original text in the target culture. A *covert translation* is required whenever a ST has a similar potential pragmatic value both for source and target language addressees as if both were "equally directly addressed". (p. 194). House gives as an example the commercial text in her study, in which both source and target language addressees are shareholders of the same company.

As a consequence of the identification of these two types of translation, House proposes the following modification to her original model: the principle of functional equivalence proposed as the criterion for the quality of a translation text has to be relativized. Functional equivalence should be sought and can only be achieved in cases of *covert translations*. House suggests that a *second level function* be posited as a criterion for an adequate translation in cases of *overt translations*, for in these cases functional equivalence cannot be achieved.

Therefore, whenever an *overt translation* is called for, the translator should not aim

at direct functional equivalence between the ST and the TT. The second level function to be matched by the translator means a function that is valid not only for the contemporary, educated middle class addressees of the target culture, but also for the corresponding potential addressees in the source culture, who are not the ST's original addressees anymore.

Hence, it is not to be expected that the TT performs an equivalent function as the ST performed in its original addressees, but the function it would perform in the source culture at the present time.

According to House, an *overt translation* presents fewer difficulties for the translator than a *covert translation*. In an *overt translation*, either the cultural factors are left intact in TT and presented via explanatory notes as culturally and historically linked elements, which are specific to the source culture, or the translator manages to find equivalent elements in the target culture setting, such as, for instance, an equivalent target language geographical or temporal dialect.

In a *covert translation*, however, cultural factors present difficulty to the translator who has to take into account the cultural differences in the two language communities, so that the translation can meet the specific needs of the target culture addressees, and the TT can achieve an effect equivalent to ST's. The translator has then to use a *cultural filter* that makes him view the ST as if he were a member of the target culture.

House highlights that in the absence of comparative studies focusing on the differences in the socio-cultural norms between the English-German-speaking communities, the two languages involved in her study, she would rather follow the assumption of basic comparability between those two cultures than to change the ST on

the assumption of cultural difference.

House does not deny that there exist differences "in values and habits, in understating or emphasizing certain emotions, etc." (p. 198) even between closely related cultures. However, for the purposes of achieving functional equivalence, the translation should carefully examine any assumption of cultural difference between source and target cultures before making changes in the ST on the basis of such cultural difference.

There follows, therefore, that if the translator unjustifiably and unwarrantedly applies the *cultural filter* and undertakes changes on the situational dimensions, he does not produce a *covert translation*, but a *covert version* of the ST. As House points out, "a covert version is by definition inadequate translation" (p. 200).

House then draws a distinction between a *covert version* and an *overt version*. An *overt version* should be provided whenever a special function is added to the TT, as for instance when literary work is adapted for young readers or second language learners.

Finally, House affirms that although her basic assumption is that a particular text may be adequately translated only as either a *covert* or an *overt translation*, in some cases and for specific purposes, any text may require an *overt translation* or an *overt version*.

It is expected that the application of House's model to the translation of contracts done in the following chapter will reveal that this kind of text requires a *covert translation*. Such expectation is based on the fact that both versions of a contract will be considered as originals by the addressees of both the source and the target communities,

and the effects achieved by the ST and the TT should be equivalent in those communities.

CHAPTER III

APPLICATION OF THE MODEL

My main objective in this chapter will be to apply Juliane House's model for translation quality assessment to two contracts and to three corresponding translations for each contract. The chapter will be divided into three sections. In the first section, I shall present some considerations on how the model will be applied to the *corpus* of this study. In the second and third sections, each contract will be analyzed according to the following procedures: the source text is analyzed and a statement of its function is provided; each translation text is then analyzed, compared to its corresponding source text and a statement of its quality is given.

3.1. SELECTION OF TEXTS AND TRANSLATORS

Two content-oriented texts representing Halliday's (apud House, 1981:34-35) ideational function of language were chosen for analysis. Both are legal contracts elaborated by the companies involved in the negotiations, and are used with the companies' permissions.

The first contract to be analyzed is a six-page License Agreement between two universities. This contract was chosen because of its simplicity, that is, although it contains some syntactic and lexical features which are characteristic of contracts and which may cause translators trouble, it is not overloaded with legal terminology or

other technical terms. Hence, it was assumed that the translators would not make many mistakes and consequently it would not be easy to spot errors. The objective was to check to what extent House's model would help in making these errors visible.

The second contract under study is a fourteen-page Passenger Sales Agency Agreement between a travel agency and a transport association. In addition to having a more elaborate content than the previous contract, this contract has a more complex syntax and lexicon. This text was chosen because of its complexity.

Both contracts were utilized in their original and complete versions, so that the translators could have an initial reading of the whole texts and form "a mental image of the universe of the text" (Nogueira, 1984:85, my translation).

Each contract was translated by three different translators, all native speakers of Portuguese. All of the translators were chosen because they were considered experienced professional translators, who were presumably familiar with legal terms. For the purposes of this dissertation, I considered an experienced professional translator someone who has been offering their services as a translator for more than six years. The aim of this selection was to analyze presumably good translations, which would present a minimum of *overtly erroneous errors*, and thus verify if the model would help identify other types of mistakes.

In addition to the theoretical support given by House's study, as presented in the previous chapter, in the analysis of the translation texts I relied on my native and near-native speaker intuition, as well as on the judgment of other proficient native speakers of both languages involved in this study. I also relied on my own experience as a lawyer, on the legal advice of two other lawyers, and on the experience of two professionals in the

publishing and air transportation businesses.

The model created by House will be applied in its entirety to the *corpus* of this dissertation, in spite of the fact that some aspects found in the model may be considered questionable aspects. For instance, the characterization of the ST by the absence of certain features may be questioned. However, it was maintained since a discussion about the adequacy of such way of characterizing a text would be largely beyond the scope of this dissertation.

Also, as done by House in her study, only the mismatches between source and translation texts will be mentioned in the analysis of each translation text. Therefore, if no mismatch is mentioned in one dimension it may be assumed that the translation text is satisfactory in that dimension.

Finally, it seems worth emphasizing that nothing could be further from my intentions than being prescriptive when suggesting alternatives in the cases in which errors were found. The suggested alternatives should not be considered as the only possible ones, but as adequate alternatives which are commonly found in contracts originally written in the Portuguese language. Such alternatives were introduced in this study in an attempt to make it not only a descriptive but also a practical study, and thus useful to contract translators.

3.2. FIRST TEXT: LICENSE AGREEMENT

3.2.1. Analysis of Source Text

1 - DIMENSIONS OF LANGUAGE USER:

(1) Geographical Origin: The text was written in Standard British English. The

spelling of the word *licence* makes it clear that British English is being used.

(2) Social Class: non-marked, the language as used by the Educated Middle Class.

(3) Time: non-marked, contemporary English. The use of [+ archaic] derivatives of *here* and *there* does not seem to have been motivated by a desire to mark the text as a [+ archaic] text, but to mark it as a [+ legal] text.

2 - DIMENSIONS OF LANGUAGE USE:

(1) MEDIUM: simple - written to be read.

This characteristic is determined by the following linguistic means:

Syntactic means:

a) Placing of a subordinate clause before the main clause.

E.g.: "In the event of ..., the rights herein" (line 50); "Subject to the terms ..., the Proprietors" (line 20);

b) Presence of passive voice.

E.g.: "All the said payments and royalties shall be made" (line 111); "All Rights in the Work ... are reserved by" (line 140); "This agreement shall be governed by ... the Law of England" (line 165);

c) Presence of long appositional structures which require the written mode since they make the sentence too long to be held in short-term memory.

E.g.: "The Proprietors will, within thirty days of receipt of the same advise the

Publishers" (line 59); "The Publishers shall, in respect of any edition of the said Work published by them render to the Proprietors ..." (line 103);

d) Absence of contractions, deletions of endings, contact and comment parentheses, and specific spoken language signals such as *you see*, *well*, which are used as rhetorical devices to give the impression of spontaneity. Absence of anacolutha, clause initial *and*, *but*, and 1st and 2nd persons personal pronouns.

e) Presence of prepositional verbs.

E.g.: "The Licence ... shall not be transferred to or extended to" (line 135); "shall be governed by or interpreted in all" (line 165);

f) Absence of alternating affirmative, interrogative and imperative sentences.

g) Presence of the literary inversion-structure (Swan, 1986:307) "Should any account" (line 117) in place of the structure *if any account*.

Lexical means:

a) Absence of subjectivity markers such as interjections, vulgarisms, etc.

b) Presence of [+ archaic] derivatives from the adverbs *here* and *there*. Many instances of "hereby" (E.g.: line 21), "hereinafter" (E.g.: line 10), "hereof" (E.g.: line 53); "thereby" (E.g.: line 111); "thereof" (E.g.: line 162) were found in the contract under study;

c) Presence of ready-made strings frequently used in written contracts, such as "Now it is hereby mutually agreed as follows" (line 19) and "for the purpose of this Agreement" (line 130).

Textual means:

a) Presence of a high degree of elaborateness. The text has a logical structure that is characterized by a heading and by the division of the text into items, which in turn are subdivided into sub-items;

b) Phrases and paragraphs are linked by constant anaphoric references, such as "in accordance with the provisions of Clause 13 hereof" (line 28); "the advance payment detailed in Clause 2 (a)" (line 45);

c) The text is predominantly etic, i.e., it contains temporal and local deictics that link the text to the situation of its production and reception, so that the situation is relevant to the organization of the message. It also contains extra-textual references, such as "Arbitration Act 1979" (line 160) and "English courts" (line 164).

Temporal deictics: "within 12 months" (line 95); "shall revert to the Proprietors forthwith" (line 97); "or then due" (line 99);

Other temporal references: "1st March 1995" (line 50); "thirty days of receipt" (line 60); "six months preceding the 30th June" (line 106);

Local deictics: "at their address" (line 148);

Other local references: "Brazil" (line 26); "to the jurisdiction of the English courts" (line 164);

d) Lack of redundancy, which marks the spoken language. Although some terms are repeated throughout the text, this repetition does not seem to provide redundancy.

The frequent repetition of terms like "Proprietors" (lines 21, 28, 33), "Publishers" (lines 21, 27, 35), and "this Agreement" (lines 20, 44, 96) perhaps may be explained by the need to safeguard against undesirable interpretation, especially when the legal document is a contract and each party's duties have to be clearly identified.

(2) PARTICIPATION: Simple - monologue.

In the text there is no indication of addressees' participation. This feature can be confirmed by the following syntactic means: absence of first and second person singular pronouns, absence of vocative phrases, absence of interrogative or imperative sentences, with the exclusive use of declarative sentences. The author does not directly address any of the parties in the contract by using a second person pronoun.

The use of modal auxiliary expressing obligation (*shall*) throughout the text may at first glance give the impression that requests are put to addressees, and this would suggest addressees' participation. However, the use of such modal verbs is not indicative of addressees being invited to participate because obligations are in the essence of contracts, and the parties of a contract are not invited to participate, but are obliged by contract to do what is required.

(3) SOCIAL ROLE RELATIONSHIP

The text contains three types of role relationship which may be detailed as follows:

(3.1) The relationship between the writer of the contract and its readers, who may be any person who happens to read the contract such as a lawyer, a notary public, a translator, etc., other than the contracting parties.

Symmetrical role relationship: Although the addresser does not try to get closer

to the addressees or to express any kind of solidarity or intimacy towards them, the relationship can be considered a symmetrical one. This conclusion is supported by the fact that the addresser is an abstract figure who is not identified in the text. Therefore, the addresser does not show any type of authority over addressees who are the general readers. The content of the text is given priority and this results in a highly impersonal, detached tone.

This characterization has been achieved through the examination of the following linguistic means:

Syntactic means:

- a) Absence of second person pronouns;

Lexical means:

- a) Utilization of technical terms without their definitions. This fact may indicate a certain degree of equality since it seems the addresser believes anyone who reads the contract will be able to understand it, without further explanation about the technical terms.

E.g.: "default" (line 35) "Copyright notice" (line 85), "statements of accounts" (line 108), and "royalties" (line 112).

(3.2) The relationship between the writer of the contract and the contracting parties.

Asymmetrical role relationship: The addresser gives instructions on how the contracting parties should behave. As the writer of the contract, the addresser, who is usually a lawyer, has professional authority over the contracting parties since he is the

one who holds the legal knowledge that makes it possible to have the contract written, in spite of any instructions that the contracting parties may give the writer as to the content of the contract.

The following linguistic means support this characterization:

Syntactic means:

a) Occurrence of sentences with the illocutionary force of order throughout the entire text.

E.g.: "The Publishers shall not alter" (line 56); "The Publishers shall be responsible for" (line 68).

Textual means:

a) The addresser makes use of a detailed description of the parties' obligations to ensure they understand what is expected from them.

E.g.: Clause 9; Clause 13 (a); Clause 17;

(3.3) The relationship between the contracting parties themselves.

Asymmetrical: Initially, it may be thought that the relationship between the contracting parties is a symmetrical one because of the nature of the text under analysis, that is, a text that conveys the mutual consent between two parties.

A contract is by definition an agreement conferring rights and imposing obligations to both parties. The capitalization of the sentence "Now it is hereby mutually agreed as follows" (line 19) aims at emphasizing the fact that there is *mutual* consent.

However, a second reading of the contract under study reveals that one of the parties is clearly in a weaker position, and that this party has little option but to accept the terms that are offered, or not to do business with the other party. In other words, the mutual consent is not so mutual after all.

This asymmetrical position is evidenced by the following textual means:

From the 19 clauses and 5 items contained in the contract, nine clauses or items mention the Proprietors' rights, while only one clause (5) makes reference to the Proprietors' obligations. On the other hand, only one clause (1) refers to the Publishers' rights while twelve clauses state the Publishers' obligations.

Addressing these figures in a different way, it is possible to conclude that the contract contains twenty-one references to the Publishers' obligations and only two references to the Proprietors' obligations.

For the purpose of investigating the position and situational roles in this dimension, we shall consider only the relationship between the writer of the contract and its readers described under (A) above. The roles performed by the addresser in (B) are similar to those performed in (A), and in the relationship described in (C), at least formally there is no role of addresser.

Position role of the addresser in letter (A) above: Writer of contracts (anonymous)

Situational role: Writer of a License Agreement to be signed by Universidade and University Limited.

(4) SOCIAL ATTITUDE

The Social Attitude considered in this item is that between the writer of the contract and its readers. In this respect, the text is predominantly characterized by a formal style which reflects social distance and impersonality. However, the use of qualifying adjectives and adverbs as well as superlatives, adds some subjectivity and informality to the text and render it a little *lighter*. These aspects are revealed in the following means:

Syntactic means:

a) Absence of contractions, anacolutha, and elliptical clauses.

b) Presence of *overcorrectness*, that is, "strict, conversationally unnatural grammaticality" (p. 74).

E.g.: "upon being called upon so to do" (line 122); "Should any account or payments specified herein be" (line 117).

c) Use of devices that give the text an impersonal tone such as passive voice (lines 111 and 140), and the frequency and complexity of noun phrases.

E.g.: "the Publishers being declared bankrupt" (line 143); "a registered letter sent to the Publishers" (line 147); "Six free copies" (line 89); "the Copies sold during the six months preceding the 30th June" (line 105);

Lexical means:

a) Absence of interjections, colloquialisms, and words bearing an emotional tone, all of which would give the text a personal tone;

b) Ample use of lexical items marked [+ formal] (Procter, 1995).

E.g.: "forthwith" (lines 97, 119, 122); "commencement" (line 149) and "execute" (line 123).

c) Ample use of slightly formal lexical items which are commonly used in written or formal spoken language (Procter, 1995).

E.g.: "rectify" (line 145);

d) Use of terms or expressions with a legal connotation.

E.g.: "re-enactment" (line 161); "umpire" (line 159); "provisions" (line 28); "without prejudice" (line 54); "reserve the right" (line 74); "statements of accounts" (line 108).

e) Use of qualifying adjectives and adverbs, and superlatives.

E.g.: "to be made faithfully and accurately by a qualified and competent translator" (line 48); "the Translation shall be of the highest quality" (line 80);

Textual means:

a) Highly elaborate and coherent text, which suggests it has been written following a pre-established plan. The subdivisions into clauses and items help make the text more objective, and each right or obligation is fully described before another right or obligation is mentioned.

(5) PROVINCE

The text is a Memorandum of Agreement made between Universidade, of Brazil,

and University Limited, of England. In this contract, University Limited, which holds the copyright on the book *Study Guide* grants Universidade the exclusive license to translate into the Portuguese language, publish and sell the book in Brazil.

The production situation indicates the supremacy of the party granting the license over the other party, and this is highlighted by certain features in the text (*Social Role Relationship*, above).

The examination of the following linguistic features confirms the preciseness in defining situations and possibilities, textual cohesion and delimitation of acceptable interpretations which are usually associated with contracts:

Graphical means: Capitalization to highlight certain lexical items.

E.g.: "Agreement" (line 20); "Proprietors" (line 28); "Clause" (line 29); "Translation of the Work" (line 47).

Syntactic means:

a) Consistent use of the modal auxiliary verb *shall* to express the mandatory connotation existing in contractual obligations (Maillot, 1975:50).

E.g.: "The Publishers shall make the following payments" (line 27); "The Publishers shall arrange" (line 47).

b) Use of the present tense and the future form *will* with the same mandatory connotation as above. This use of the form *will* does not take its common use for unpremeditated actions, but expresses a formal and impersonal type of command similar to *must*, as pointed out by Thomson (1974:139).

E.g.: "The Publishers undertake to ensure that" (line 79); "The Proprietors guarantee that" (line 130); "The Proprietors will, ..., advise the Publishers" (line 59).

c) Absence of devices usually used for emotive effect such as rhetorical questions, alternation between declarative, exclamative and interrogative sentences.

d) Use of passive voice and other impersonal constructions, as described in *Medium* above, which favor an objective and precise presentation of the parties' rights and obligations.

Lexical means:

a) Use of expressions designed to clearly delimit the range of possible interpretation.

E.g.: "then in such case" (line 95); "then in either event" (line 149); "in so far as they relate to the sales" (line 128); "in accordance with the provisions of" (lines 28 and 159);

b) Use of vague expressions whenever it suits the interests of the party granting the license.

E.g.: "without prejudice to any claim which the Proprietors may have for damage and/or otherwise" (line 54); "without deduction for exchange charges, commission or other cause" (line 114); use of determiner *any* meaning *not important which* (Procter:1995), as in lines 57, 64, 100, 103 and 110.

In fact, the only instance when the vagueness was to the Publisher's advantage could be found in lines 79/81.

c) Repetition of lexical items designed to restrict interpretation.

E.g.: "the *following* territories" (line 25); "the *following* payments " (line 27); "the *said* payment" (line 33); "the *said* Work" (line 56); "*such* new manuscript" (line 66); "*such* failure" (line 145).

d) Frequency of legal terminology (*Social Attitude*, Lexical Means (c) above).

e) Absence of devices designed to make the text sound attractive or poetic, such as figurative language, alliteration, and lexical items marked [+ emotive], except for the use of the qualifying modal adverbials described above (*Social Attitude*, Lexical Means (e) above)

f) Presence of phrases that explicitly state acceptable alternatives.

E.g.: "on or before 1st March 1995" (line 51); "any new manuscript and/or illustrations" (line 64).

g) Use of noun phrases connected to the main clause by the conjunction *or* in order to include various possibilities, once again to the Proprietors' advantage.

E.g.: "in accordance with the provisions of the Arbitration Act 1979 or any subsisting statutory modification or re-enactment thereof" (line 159).

h) Use of words that refer to the countries involved in the contract.

E.g.: "Brazil" (line 26); "British Pounds Sterling" (line 114); "English courts" (line 164); "England" (line 166).

i) Use of expressions that aim at introducing sentences covering as many hypotheses as possible.

E.g.: "In the event of" (line 143); "If any difference shall arise" (line 154).

Textual means:

a) Highly coherent text due to the employment of the devices stated in *Social Attitude* above, and the following mechanisms of theme dynamics, clausal and iconic linkage:

Theme dynamics:

a) Repetition of lexical items that function as key words expressing the contractual relationship between the parties.

E.g.: "Agreement" (lines 20, 31, 33, 96, 131, etc.); "payment(s)" (lines 27, 34, 45, 111, 117, etc.); "right(s)" (lines 96, 101, 119, 126, 140, etc.); "due" (lines 32, 99, 111, 133, 153, etc.); "notice" (lines 98, 120, and 146).

b) Use of *this* and *the* as deictics.

E.g.: "this Agreement" (line 20); "this paragraph" (line 124); "the Work" (line 22); "the Translation" (line 80);

c) Frequency of anaphoric referencing.

E.g.: "such" (lines 72 and 78); "their" (lines 125 and 148); "same" (line 157); "which" (lines 32 and 54).

d) Logical organization of the contents: characterization of the object of the license, payments to be made, description of the translated work, accounts, preservation of the Proprietors' rights, description of cases of breach of contract, interpretation of

contract and applicable law.

Clausal linkage:

a) Use of the logical connective *then*.

E.g.: "then in either event" (line 149); "then in such case" (line 95).

b) Ample use of additive and alternative relations by means of the conjunctions *and* and *or*, respectively.

E.g.: Many instances of *and* throughout clause 13 (a) and *or*, in clause 18.

Iconic linkage:

a) Structural parallelism between the clauses "wherever necessary" (line 69) and "wherever possible" (line 79);

Statement of Function

The addresser's main purpose in this text is to inform the contracting parties, as precisely as possible, about their contractual rights and obligations. The natural flow of information is guaranteed by a condensed and premeditated text, which is not interrupted by the addressees' participation.

A close look at the situational dimensions of language use confirm the statement above, since it can be observed that all dimensions clearly operate in support of the ideational functional component. On the other hand, the interpersonal component is not overtly marked, that is, the addresser seems to want to impart information and not to influence, convince or involve the addressees. The interpersonal component is only implicitly

present in the dimension *Social Role Relationship*. It is also present in the dimension *Social Attitude*, to make the text more easily digestible in order to suit the addresser's purpose of guaranteeing information is clearly understood, as demonstrated below.

The statement of function above derives from an examination of how the situational dimensions contribute to the two functional components, which can be summed up as follows:

In the dimension *Medium*, the *written to be read* mode gives support to the ideational component by facilitating the flow of information in a logical and well-structured manner. The natural and uninterrupted flow of information is also facilitated by the inexistence of the addressees' participation, which is confirmed by the absence of alternating affirmative, interrogative and imperative sentences. The predominance of the ideational component is also clearly observed in the text's high degree of elaborateness and in the absence of subjectivity markers.

Similarly, in the dimension *Participation*, the feature *monologue* indicates an absolute lack of addressee participation. There are no questions or other attempts to involve the addressees, or any alternation of interlocutors, which would mark the interpersonal component.

The impersonal *Social Role Relationship* between the writer and the readers operates in support of the ideational component in that content is given priority and information is passed on undisturbed by any concern relating to the social positions of addresser and addressees. In this dimension, the interpersonal component is marked to a minor degree by the use of the illocutionary force of order in the utterances showing the asymmetrical relationship existing between the addresser and the contracting

parties. This component is also supported by the relationship of dominance between the two contracting parties (*Social Role Relationship*, 3.3, above).

The formal style level in the dimension *Social Attitude* strongly supports the ideational component. The formality is marked by the following features: absence of markers that give the text a personal tone, such as interjections and colloquialisms; formal usage of grammar; and use of structures which give the text a formal tone, such as passive voice and complex noun phrases. In addition, the use of well-planned and well-structured sentences provides for an objective flow of information.

On the other hand, the overall formal tone also exerts an intimidating power over the readers, in support of the interpersonal component. However, the use of qualifying adjectives and superlatives which add some subjectivity and informality to the text, to a minor degree contributes to the interpersonal component of the text's function by making the text *lighter* and consequently, more easily understood.

Lastly, in the dimension *Province*, several devices act in support of the ideational function, since they allow for an objective passing on of information:

- (a) use of precise legal terminology;
- (b) strong textual cohesion;
- (c) use of items lacking connotative meanings;
- (d) explicit consideration of acceptable alternative interpretations;
- (e) absence of markers which favor the interpersonal function, such as figurative language, alliterations and foregrounded word-order.

3.2.2. Analysis of Translation Text no. 1.1

COVERTLY ERRONEOUS ERRORS

The analysis of TT 1.1 reveals that there are mismatches in the following situational dimensions:

DIMENSIONS OF LANGUAGE USE:

MEDIUM

Some features which help characterize the *written to be read* mode are not present in the TT, as evidenced by:

Syntactic means:

(a) Absence of a [+ formal] translation for the literary inversion-structure "Should any account" (line 117), which is translated as "Se qualquer conta" (line 118). Maybe *na hipótese de* would have been a better rendering for that phrase.

Lexical means:

a) The TT lacks some [+ archaic] derivatives from the adverbs *here* and *there*. Thus, "hereof" (lines 29 and 53), "hereto" (line 163), "thereafter" (line 95) and "thereby" (line 111) are simply omitted from the TT. The consequence of these omissions is that the TT is not so unambiguously clear as the original writer seems to want the ST to be. In other words, what is clearly stated in the ST must be guessed in the TT, a fact that sometimes requires a second reading of the whole clause in which these terms appear.

For instance, the omission of "thereby" (line 111) may lead to the interpretation that

any sums shown to be due by means of any document shall be paid. However, the inclusion of the term *thereby* leaves no doubt that only the sums shown to be due in the *statements of accounts* are expected to be paid.

In addition, in some other cases these derivatives do not receive the most adequate translation. For instance, the term "hereinafter" (lines 10, 13 and 18) receives the dictionary-type translations of *de agora em diante* and *daqui em diante*. However, it seems that the [+ archaic] term *doravante* would be more appropriate since it would fit the purpose of using formal language, and it is a term that is commonly used in Brazilian contracts.

b) Other omissions occur in many instances of the TT. Some of these omissions do not invalidate the referential meaning of the clause, but may be considered mismatches because they detract from the explicitly formal tone sought in the ST. The following examples may be illuminating: "together" (line 90, ST), "actual" (line 91), "then" (lines 95 and 149), and "so to do"(line 122).

The omission of some other terms give rise to an ambiguity which is not present in the ST, and which breaks the semantic coherence of the text. The omission of a translation for "cause" (line 116) makes the reader wonder what the term "outros" (line 116) refers to. One may be led to think it refers to *outros impostos*, which is not the case.

On the other hand, some omissions are probably made by the translator to conform to the structure of the Portuguese language, and they seem to have been for the better. Take the case of the omission of "to be" (line 158), which is not really necessary in the sentence in Portuguese since the verb "será" (line 157) in the future tense makes it obvious that the arbitrators are yet to be named. This omission also prevents from having

será and *a ser* in very near positions.

Similar examples are provided by the omission of "they" (line 128), which as a personal pronoun in a subject position should really be omitted, and "their" (lines 148 and 158), the omission of which enhances the clarity of the text.

Still aiming at the correctness desired by texts which are *written to be read*, some omissions could have been made by the translator. For instance, although the indefinite article is grammatically required in "a registered letter" (line 147), the Portuguese language does not require the use of the article in such case. Thus, "*uma* carta registrada" (line 148) gives emphasis to the fact that it is not two or three letters. Had the writer of the ST wanted to emphasize the number, he would have chosen the determiner *one*.

c) Some insertions are made by the translator which result in a clearer and more fluent text than the ST, such as "cometida" (line 35). The insertion of "remeterão" (line 62) really makes the clause clearer than the original clause since, as one cannot "advise comments" (line 62), it seems a verb is missing in the ST.

On the other hand, the insertion of "e" (line 159) creates an instance of ambiguity in the TT which is not present in the ST. In the ST, it seems clear that what will be done in accordance with the Arbitration Act 1979 will be the arbitration itself. However, in the TT it seems that what will be done in accordance with that Act will be the appointment of the mutually agreed arbitrator.

The insertion of "de" (line 160) makes the phrase "Arbitration Act 1979" (line 160) unambiguous. In doing so, the translator risks indicating the date of the Act, although

1979 refers to the number of the Act. However, as it is probable that the number refers to a date, this insertion cannot be considered a mismatch.

There is also the unnecessary insertion of "dia" (line 107).

d) The ready-made strings found in the ST are not translated by their usual counterparts in Brazilian contracts. Hence, the term "concordado" (line 19) in the phrase "Fica por meio deste, mutuamente concordado o que segue" would probably sound awkward to those dealing with contracts, since the term *acordado* is largely accepted by usage.

The same holds true for the use of "propósitos" (line 131) in the ready-made string "for the purpose of this agreement" (line 130), while *finals* would have sounded as a better equivalent for that term.

Also, the equivalent expression in Portuguese for "prior written consent" (lines 101 and 139) would be *consentimento prévio por escrito*. This ready-made string (lines 101 and 139) is not maintained in the TT.

Textual means:

a) Omission of the temporal deictic "forthwith" (line 97), which is detrimental to the characterization of the text as a predominantly etic text.

SOCIAL ROLE RELATIONSHIP

Lexical means:

a) The TT does not utilize the legal terms most commonly found in Brazilian contracts which are equivalent to those used in the ST. The use of [- technical] terms,

perhaps to facilitate comprehension or perhaps due to ignorance of legal terminology, de-characterizes the equality present in the symmetrical role relationship between the writer of the ST and his readers. Some examples can be provided: "default" (line 35) translated as "falta" (line 35), instead of *inadimplemento*; "statements of accounts" (line 108) translated as "declarações de contas" (line 108), instead of *demonstrações financeiras*; "notice" (line 120) translated as "aviso" (line 122), instead of *notificação*; "umpire" (line 159) translated as "juiz" (line 158), instead of *árbitro*; "rights and liabilities" (line 156), translated as "direitos e responsabilidades" (line 156) instead of the commonly used expression *direitos e obrigações*.

SOCIAL ATTITUDE

Syntactic means:

a) The *overcorrect* phrase "upon being called upon so to do" (line 122) is not rendered in Portuguese in an *overcorrect* style. Thus, besides the problem of the insertion of a conditional item which is not present in the original phrase, "se forem solicitados" (line 123) lacks the *overcorrectness* mentioned above. Maybe a better translation of the phrase would be *quando solicitados a assim proceder*.

b) The TT lacks complex noun phrases that would add to the impersonal tone of the text.

E.g.: "In the event of the Publishers being declared bankrupt" (line 143), translated as "No caso de falência dos Editores" (line 144). However, it seems this rendering of the phrase presents a better translation of it into Portuguese than a more literal translation would provide.

Similarly, "the copies sold during the six months preceding the 30th June" (line 105) is translated as "das cópias vendidas durante os seis meses, anteriores ao dia 30 de junho" (line 105), with the insertion of a comma that breaks the noun phrase.

Lexical means:

a) Use of [- formal] terms than used in the ST.

E.g.: Use of lexical item "coisa" (line 55) when translating the term "otherwise" (line 55), which gives the sentence a colloquial tone.

The use of "feito" (line 3) as a translation for "made" (line 3) gives the phrase a rather informal tone. As it does not seem the writer's intention was to use a [+ formal] term, in which case s/he would have used *entered into*, maybe *realizado* would have been a better choice.

The term "commencement" (line 149) could have been translated by the equally formal expression *termos iniciais*, instead of "no início" (line 149). Also, "without prejudice" (line 54), translated as "sem prejudicar" (line 54) could have been rendered as *sem prejuízo de*.

b) Use of [- formal] terms than their equivalents used in contracts in the Portuguese language, which share the same degree of formality with the contract under analysis.

E.g.: "Whereas" (line 15), translated as "Uma vez que" (line 15) instead of *considerando que*; "make the following payments" (line 27), translated as "farão os seguintes pagamentos"(line 27) instead of *efetuarão os seguintes pagamentos*; "other than those" (line 140), translated as "a não ser aqueles" (line 141) instead of *salvo aqueles*; "dispute" (line 162), translated as "desacordo" (line 162) instead of *litigio*.

c) Use of a construction which sounds totally informal, not to say awkward: "Third Party" (line 70), translated as "Terceiras Partes" (line 72) instead of *Terceiros*.

d) Lack of counterparts for legal terms in Portuguese (*Social Role Relationship*, above).

e) Omission of several [+ formal] words and expressions, as described in *Medium* and in the section *Overtly Erroneous Errors* (2.2), below.

E.g.: derivatives from *here* and *there* and the adverb *forthwith*.

PROVINCE

Graphical means:

Some graphical features in the ST are not matched in the TT.

a) The terms "trabalho" (line 71) and "acordo" (line 121) are not capitalized. The same fact happens with the term "proprietários" (line 122), which besides de-emphasizing the item also brings the consequence of causing a certain degree of ambiguity since in some instances the word *proprietor* is used in the ST with an initial small *p*, meaning the holders of any right, not the copyright being granted by the contract under study.

The capitalization of the letter beginning the parties' names makes it easier to identify them throughout the contract. In fact, there is a tendency in Brazilian contracts to capitalize the whole names of the parties instead of only the first letter.

Other terms which are capitalized in the ST are "of the One Part" (line 10) and "of the Other Part" (line 13). Strangely enough, only the first phrase is capitalized in the

translation (lines 10 and 14), maybe as an indication that the translator found the capitalization of such phrases unusual.

b) TT's use of boldface type is much more abundant than ST's. Although this resource is very useful for those dealing with contracts because it allows for a faster identification of the contract you want from among many others, if boldface type comes in excess, it ceases to serve such purpose. In the TT, the long names and addresses of both universities are all printed in bold.

Syntactic means:

a) Non-use of the present tense with mandatory connotation.

E.g.: "The Publishers undertake to ensure that" (line 79), translated as "Os Editores se empenharão em assegurar que" (line 81).

Lexical means:

a) Lack of precise legal terminology, as pointed out in *Social Role Relationship* and *Social Attitude* above, a fact that jeopardizes the writer's intention to create a legal document.

Textual means:

Theme dynamics:

a) Omission of the anaphoric reference conveyed by the pronoun "their" (lines 148 and 158). These omissions cannot be considered mismatches, as explained in *Medium* (lexical means, b) above.

Clausal linkage:

- a) Lack of logical connector "then" (lines 95 and 149);

OVERTLY ERRONEOUS ERRORS

1. Several breaches of the target language system can be found:

1.1) *Cases of ungrammaticality:*

a) Insertion of reflexive pronoun "se" (lines 52, 96, and 152) in connection with the non-pronominal verb *reverter*;

b) Wrong choice of preposition in "reverterão para" (line 52), "para assegurar" (line 74), "sem prejuízo para" (line 98). Suggested alternatives: "aos", "por", "de", respectively.

Besides making the sentence sound grammatically wrong, poor choice of prepositions can lead to ambiguous sentences. Take the case of the second example above: one may be led to think the Publishers shall be responsible for paying any fees required for ensuring that appropriate acknowledgment is made, which is not the case;

c) Use of conditional item "se" (line 123) which introduces an element of uncertainty that is not present in "upon being called" (line 122);

d) Use of singular instead of plural nouns in "anteriores *ao dia* 30 de junho e 31 de dezembro" (line 106);

1.2) *Cases of dubious acceptability:*

a) Change of active construction "and shall publish it" (line 49) into passive "e será

publicada" (line 48) creating a stilted sentence which has to be reread in order to be understood because it fails to make clear the Publisher's obligation to publish the work;

b) Use of redundant "/ou" structure in "em/ou antes do dia 1º de março de 1995" (line 50) as a translation for "on or before 1st March 1995" (line 50). The translator could have made the text run more smoothly if s/he had used *até 1º de março de 1995, inclusive*;

c) The translation of "the said respective dates" (line 109) into "das respectivas mencionadas datas" (line 109) creates an awkward phrase. Maybe, for the sake of style the translator could have omitted the word *respectivas*, and translated the phrase as *das datas mencionadas*, or maybe s/he could have used *daquelas respectivas datas*;

d) The translation of "of the One Part" (line 10) and "of the Other Part" (line 13) created the very unusual phrases "de Uma Parte" (line 10) and "de outra parte" (line 14). It seems the use of *de um lado* and *de outro lado* would have provided a better rendering for those phrases;

e) The verb *fazer* collocates better with *exigência* than the verb "ter" (line 55). This can be confirmed by the commonly heard expression *tenho uma exigência a fazer*;

f) Use of "não se efetuará" (line 43) as the translation of "shall not come into effect" (line 44). The expression *come into effect* when referring to laws and contracts has the counterpart in Portuguese *entrar em vigor*. Considering that *efetuar* is most commonly used in the sense of *execute, make, or perform*, one is left to wonder how a contract can make or perform itself;

g) Literal translation of "the Proprietors are the proprietors of" (line 15) as "os

Proprietários são os proprietários do" (line 15), creating a lexical repetition which sounds awkward in Portuguese. It seems that the repetition of the term *proprietors* in the ST is not a rhetorical device for producing emphasis. Thus, the first instance of *proprietors* is capitalized and refers to the parties to the agreement, while the second refers to the holders of any rights. Therefore, the translator could have used a synonym to avoid such repetition, for the sake of style. Suggested alternative: "os proprietários são detentores do direito de propriedade sobre;"

h) Literal translation of "For and on behalf of" (lines 171 and 176), with the omission of conjunction *and*, producing an awkward phrase in Portuguese: "Por em nome de" (lines 171 and 175).

2. There are a number of mismatches of the denotative meanings of items in the ST and in the TT which can be subclassified as wrong selections, omissions and ambiguities:

2.1) *Wrong selections:*

a) "re-enactment thereof" (line 161) is translated as "legislação pertinente" (line 161), an expression which allows for the interpretation that any related law may be used to settle the dispute, not exclusively any re-enactment of Arbitration Act 1979, mentioned in Clause 18 of the contract. Suggested form: "nova promulgação da mesma;"

b) The TT uses the term "direitos autorais" (lines 39 and 41) as a translation for "royalty" (lines 39 and 41). It seems the translator is confusing *royalty* with *copyright*. The former is a type of commission and means "a periodical payment made by a publisher to an author who has licensed him to publish his work, usually calculated as a percentage of the sale price of each copy sold of the book" (Walker, 1980:1092). On the

other hand, *copyright* refers to "the group of rights relative to original literary, dramatic, musical, or artistic work, whether published or unpublished, vested normally in the creator thereof" (Walker, 1980:290).

It is suggested that the term remain untranslated, since it is a term largely known by those dealing with contracts. In fact, four out of the five dictionaries specialized in legal/business terminology consulted maintained the term *royalty* with an explanation of its meaning (Pinho, 1995:310; Simões, 1989:328; Downes, 1993:458; Goyos Junior, 1994:233). The other specialized dictionary consulted presented the following definition: "comissão de direitos autorais" (Mello, 1992:442). Only the two non-specialized dictionaries consulted translated the term simply as "direitos autorais" (Pietzschke, 1977:814; Houaiss, 1982:679).

Furthermore, the terms *royalty* and *copyright* have been used in the Portuguese language not only in specialized contexts, but also in publications that reach the lay public such as books, magazines and newspapers. For instance, the term *copyright* can be seen on the credit page of books translated into Portuguese, and the term *royalties* appears on the following headline of a newspaper of large circulation in the State of Santa Catarina: *SC briga por royalties do petróleo* (Diário Catarinense, 1995:72).

c) The term "jacket" (line 83) has mistakenly been translated as "orelha" (line 85), and not *sobrecapa*, as would be expected. However, it is worth mentioning that even if the term *orelha* were correct there would be no need to put it between quotation marks since it is a term which may be found in dictionaries to mean *jacket flap*;

d) The translation of "the Law of England" (line 166) as "a Lei da Inglaterra" (line 166) may lead to the wrong interpretation that the text is referring to a (hypothetical)

British Constitution, because in Brazilian Portuguese, when we refer to *a Lei* a reference is usually being made to our Federal Constitution.

However, as there is no such British Constitution in the usual sense of a single written document, it is clear that a reference is being made to the entire body of law. Hence, a better translation for the expression could be *as leis da Inglaterra* or *a legislação inglesa*;

e) The term "Trabalho" (lines 15, 18, etc.) seems to be an inadequate translation for "Work" (lines 15, 18, etc.). The meaning of *Work* in this context is *literary work* and as such, the Portuguese word *obra* seems to be a better rendering for the term. In Brazil, we would more commonly refer to *as obras de Machado de Assis* than *os trabalhos de Machado de Assis*;

f) The translation of "execute" (line 123) as "providenciar" (line 123) does not offer an exact rendering of the English term in the context it appears. As a legal term, *execute* means "1. to complete, as a legal instrument; 2. to perform what is required" (Gifis, 1993:167). It seems that in using this term, the ST wants to emphasize the personal, individual characteristic of the obligation. The verb *providenciar*, it seems, does not give the obligation the same personal characteristic, but it becomes an obligation which may involve third parties, since the Publishers could always give the excuse they had *providenciado* a document, but it did not depend upon them to have it ready. Suggested alternative: "emitir;"

g) The expression "Ato de Julgamento" (line 159) does not convey the idea that the writer is referring to a type of legislation, as it is clear in the English expression "Arbitration Act" (line 160). The word *ato* is more commonly used in Portuguese in the

sense of *action*, not in the sense of "a law or formal decision" (Procter, 1995: 13).

Besides, *julgamento*, as a legal term, normally refers to a decision rendered by a judge, not an arbitrator. Suggested alternative: "Lei de Arbitragem."

Following the same line of thought, "umpire" (line 159) could have been translated as *árbitro*, instead of "juiz" (line 158);

h) Inadequate word choice when translating "in either event" (line 149) as "em ambos os casos" (line 149). The conjunction *either* refers to "one *or* the other of two" (Procter, 1995: 445, my emphasis), while *ambos* means "um *e* outro; os dois" (Ferreira, 1986:102);

i) Inadequate translation of "publication" (line 90) as "lançamento" (line 91) instead of *publicação*;

j) The noun "acknowledgment" (lines 73 and 86) receives two different translations: "reconhecimento" (line 74) and "esclarecimento" (line 88). Although it was not possible to find a specific counterpart for that term in Portuguese, it seems the translator could have used *crédito* or *crédito de copyright*, since the page on which such acknowledgment appears is called *página de crédito* in Portuguese. The words chosen by the translator are rather vague words, and do not suggest where the acknowledgment should be placed.

k) Use of the conjunctive "contanto que" (line 129) introducing a condition which is not present in "in so far as" (line 128), which means "to the degree that" (Procter, 1995:736).

2.2) Omissions:

a) When omitting the pronoun "this" (line 3), the translator prevented the date the contract is signed from being indicated right in the beginning of the contract;

b) The omission of the entire phrase "at the exchange rate prevailing" (line 112) leaves important information out of the contract. It also creates the phrase "na época em que a declaração for feita" (line 114), which does not convey the same idea as "at the time the statement is due" (line 113), because the statement can be made before or after it is due;

c) Omission of derivatives from *here* and *there* creating instances of ambiguity, as described in *Medium*, above;

d) Omission of [+ formal] temporal deictic *forthwith* in the three instances in which it appears in the ST (lines 97, 119, 122). This omission not only destroys the emphasis put on the immediacy and priority of the action to be taken, but also deprives the text from an important element in the characterization of the formal language used.

2.3) Ambiguities:

a) The translation of "of the same" (line 60), which refers to the word *specification*, as "deste" (line 61), leaves doubt as to what the text is referring to.

b) The translation of the preposition "for" (line 72, second instance of "for") as "para" (line 74) also creates ambiguity, as explained in 1.1 b), above.

Statement of Quality

The comparison of ST1 and TT 1.1 along the situational dimensions indicates that there are mismatches in all dimensions of language use, except for the dimension *Participation*.

In *Medium*, the TT lacks elements that characterize the *written mode*. For instance, the omission of several derivatives from *here* and *there* not only impairs comprehension and thus weakens the ideational component of the text's function, but also excludes from the TT items which are typically used in written texts. The interpersonal functional component is also violated since the writer's intention to create a text with the features of a written text is not preserved in the TT.

In the dimension *Social Role Relationship*, the use of [- legal] terms impairs the ideational component of the text's function, due to the reduction of the information load passed on. In addition, the interpersonal component is also compromised to a minor degree since with the non-utilization of legal terms, the degree of equality present in the ST between the writer of the contract and his readers is altered in the TT. In the TT, comprehension seems to have been facilitated by the use of words that have both a legal and a general, non-technical meaning.

The mismatches in *Social Attitude* clearly weaken the ideational component of the text's function since they render the TT much [- formal] than the ST. The interpersonal component is also altered in that the intention of the addresser to make a text that is impersonal and detached is not accomplished in the TT to the same degree. In addition, the TT loses part of the intimidating power the impersonal language in the ST provides.

In *Province*, the ideational component is not developed in the TT as strongly as in the ST: the TT fails to use cohesive devices and uses [- legal] terminology. The interpersonal component is also impaired in that the TT makes use of [- emphatic] effects than the ST, such as the non-capitalization of some terms.

By far the problems present in the TT are related to *overtly erroneous errors*. These errors detract from a clear and efficient passing on of information and may lead readers to misinterpret the contract. Thus, the ideational component which is strongly marked in this type of text is violated to a considerable extent in the TT.

In addition, the *overtly erroneous errors* found cause impact on the interpersonal functional component in that the message is not transmitted through a precise and impersonal discourse, as it is in the ST, and the reader in many cases has to take the trouble of reading part of the text twice or even many times to try to figure out the writer's intention.

Summing up, the interpersonal component of the text's function which is not strongly marked but implicitly existent is violated in the dimensions *Social Role Relationship*, *Social Attitude* and *Province* and through the overtly erroneous errors found. The strongly marked ideational component is infringed upon in four dimensions of language use and especially through the many *overtly erroneous errors* found in the TT.

3.2.3. Analysis of Translation Text no. 1.2

COVERTLY ERRONEOUS ERRORS

Mismatches in the following dimensions can be identified in the TT:

DIMENSIONS OF LANGUAGE USE:

MEDIUM

Syntactic means:

a) Absence of a [+ formal] translation for "Should any account" (line 117), which is translated as "Caso qualquer conta" (line 124). Maybe with the use of *na hipótese de* the TT would have maintained the degree of formality present in the ST.

Lexical means:

a) Different treatments are given to [+ archaic] derivatives from the adverbs *here* and *there*. Five of these derivatives seem to have received inadequate translations. Take the case of "the parties hereto" (lines 156 and 162), translated as "das partes com referência a este" (line 167) and "as partes com referência a este assunto" (line 173), creating a meaningless phrase. The term *hereto* makes a reference to the parties to that document, not to the parties to any other document. Suggested alternative: "partes do presente Contrato."

In the case of "thereafter" (line 95) translated as "subsequentemente" (line 101), the reader is led to asking him/herself *what to?*. Suggested alternative: "após tal fato."

When translating "herein" (lines 117 and 118) and "hereby" (line 135) using the word "aqui" (lines 124, 126 and 144, respectively), the translator uses a much [- formal] construction than the one used in the ST. Suggested alternatives: "no/pelo presente Contrato."

Finally, the translation of "thereof" (line 162) as "desta" (line 172) gives the

impression a reference is being made to "modificação legal existente" (line 172), whereas *thereof* in that case is referring to "Ato de Arbitragem" (line 171).

The TT also omits two of these derivatives. Hence, the omission of "thereby" (line 111) may lead to the interpretation that any sums shown to be due by means of any instrument, and not only by means of said statements of accounts, shall be paid.

In addition, the omission of "hereby" (line 19) de-emphasizes the official character of the statement and the performative character of the utterance;

b) There are three instances of omission, apparently to conform to the structure of the Portuguese language, which seem to have improved the text in Portuguese: "their" (line 148); "a" (line 147), and "they" (line 94).

Also for the sake of style, some other omissions could have been made by the translator. For instance, the articles "a" (lines 21), "um" (line 50), and the pronoun "eles" (line 140) seem to be unnecessary in the contexts they appear. Likewise, the omission of "seu" (line 170) would have prevented the ambiguity existing in the TT (but not in the ST), as to whether *seu* is referring to "as mesmas" (line 168), or to "de duas pessoas" (line 169).

There are some omissions which do not invalidate the denotative meaning of the sentence, but detract from the explicitly formal and emphatic tone used in the ST. Take the cases of "that are" (line 59), "any" (line 98), "then" (line 99), and "so to do" (line 122). In the last two cases, an important temporal reference - then - is missing, and so is an expression which really adds to the formal tone of the text;

c) Two insertions are made which provide for a clear and fluent text: "por parte"

(line 35) and "de" (line 171, second instance). In this last case, the insertion of *de* referring to the year of publication of the law, creates an unambiguous sentence which is different from the ambiguous sentence in the ST. However, as most chances are the number refers to the year of publication of the law, and not to its number, the insertion cannot be considered a mismatch. This kind of insertion provides a good example of a situation in which the translator is forced to disambiguate a sentence, to conform to the structure of the Portuguese language.

On the other hand, some insertions seem to be unnecessary, according to the structure of the Portuguese language. Take the cases of "seja" (line 68); "em relação à" (line 104); "um" (line 107); and "por parte " (line 108).

In addition, the poor translation of "failing to issue" (line 51) as "não cumprirem" (line 52) led to the insertion of "o ato de" (line 52) and to the awkward sentence "Caso os Editores não cumprirem o ato de publicar" (line 52).

One insertion could have been made in order to produce a better text in Portuguese: *farão*, before the word "comentários" (line 66);

d) The ready made string "prior written consent" (lines 101 and 139) is not maintained in the TT, and receives two different translations: "um consentimento prévio por escrito" (line 107) and "prévio consentimento por escrito" (line 148).

e) Non-use of the legal term in Portuguese for "notice" (line 98), which is translated as "avisos" (line 104). Suggested alternative: "notificação."

Textual means:

a) Lack of temporal deictic "then" (line 99), which prejudices the characterization of

the text as a predominantly etic text.

SOCIAL ROLE RELATIONSHIP

a) Some legal terms in the ST are not translated by their legal counterparts in Portuguese: one instance of "notice" (line 98) is translated as "avisos" (line 104), instead of *notificação*; "default" (line 35) is translated as "falha" (line 35), instead of *inadimplemento*; "rights and liabilities" (line 156), translated as "direitos e responsabilidades" (line 167), instead of *direitos e obrigações*;

b) Translation into Portuguese of the largely accepted English words "royalty" (lines 39 and 41) and "copyright" (line 67). The translator could have maintained the terms in the English language, and thus the degree of equality which characterizes the symmetrical role relationship between the writer of the contract and its readers would have been maintained.

SOCIAL ATTITUDE

Syntactic means:

a) Lack of *overcorrectness* found in ST's "upon being called upon so to do" (line 122) which is translated as "caso seja chamado para" (line 130). Suggested alternative: "quando solicitados a assim proceder."

b) The TT lacks a complex noun phrase that would add to the impersonal tone of the text. Hence, "In the event of the Publishers being declared bankrupt" (ST, line 143) is translated as "Caso seja declarada a falência dos Editores" (line 153). However, it seems this rendering of the phrase presents a more natural translation of it into Portuguese than a literal translation would provide.

Lexical means:

a) Use of a [- formal] term than the one used in the ST.

E.g.: "commencement" (line 149), translated as "no início" (line 159), instead of [+ formal] *termos iniciais*; "claim" (line 54), translated as "pedido" (line 57), instead of *reivindicação*; "this" (line 13), which indicates the date has to be written in full form, translated as "em" (line 3), instead of *aos*;

b) Use of the non-legal term "avisos" (line 104) for "notice" (line 98), as stated in *Social Role Relationship* above.

c) Omission of some [+ formal] words and expressions.

E.g.: derivatives from "here" and "there" (lines 19 and 111, respectively); "so to do" (line 122); and "then" (line 99).

d) Use of [+ colloquial] expression "do tal" (line 110), as a translation for "of the said Work" (line 104).

PROVINCE

Graphical means:

a) Several terms which take a capital initial in almost all the clauses in the ST, in some other clauses of the ST are not capitalized, probably by mistake. This happens with the terms "work" (line 51); "proprietors" (line 99); "licence" (line 151); and "publishers" (line 138). These terms do not take capital initials in the TT either (lines 53, 105, 161 and 148, respectively). In this case it is possible to argue whether the translator could not (or should not) have made the corrections in order to facilitate the reader's task and to

maintain textual cohesion. If the translator had chosen to correct those items, the translation would have been better than the original text itself, which is not a very uncommon fact in the life of practicing translators. However, this issue raises one question: *How far can a translator go in correcting mistakes made in original texts?*

In some other cases, words capitalized in the ST do not take capital initials in the TT. This fact occurs with "Translation" (line 24); and "Agreement" (line 96), not capitalized in the TT (lines 24 and 102, respectively). This non-use of capitalization jeopardizes the textual cohesion sought in the ST.

The inverse situation occurs with non-capitalized expression "English courts" (line 164), which is unnecessarily capitalized in the TT (line 176).

b) Although bold-face type is used to highlight three phrases in the ST (lines 3, 15 and 19), only two phrases are in bold in the TT (lines 15 and 17). From these two phrases, only one (line 15) coincides with a phrase in bold in the ST (line 15). Hence, it seems the translator has used different criteria for highlighting terms and expressions from the criteria used by the writer of the ST;

Syntactic means:

a) Inconsistent translation for modal auxiliary verb *shall*, which is in some instances translated as "deverão/deverá" (lines 27, 48, 88, 102, 162, etc.), or as "poderão/poderá" (lines 60, 106, 144, 146, etc.), followed by a verb in the infinitive. This inconsistency may create serious interpretation problems and lead to disputes between the parties, because one option - *deverão/deverá* - states an obligation, while the other - *poderão/poderá* - states a possibility. This idea of possibility is not present in the ST

because, when used in contracts, *shall* expresses "the mandatory connotation inherent to contractual obligations" (Maillot, 1975:50).

In addition, to make it even more confusing, sometimes the modal verb is used as a synonym for *will* and the relevant verbs take the future form, as in "entrará" (line 45), "serão" (line 73), and "será" (line 87). Maybe the translator would have made a better choice if s/he had used the future tense for all the verbs which have *shall* as their modal auxiliary, as it is commonly used in Brazilian contracts.

Lexical means:

a) Non-use of a vague expression in one situation in which it would have suited the interests of the party granting the license to be vague. Thus, when translating "and/or otherwise" (line 55) as "e/ou do contrário" (line 58), the translator not only creates a meaningless phrase - on the contrary to what? - but also does not use a vague expression as used in the ST. Suggested alternative: "e/ou por outro motivo."

b) Some cases of non-utilization of precise legal terminology jeopardize the characterization of the text as a legal text.

E.g.: Use of the non-legal term "avisos" (line 104) for "notice" (line 98), instead of *notificações*; "pedido" (line 57) as a translation for "claim" (line 54), instead of *reivindicação*; omission of some derivatives from "here" and "there" (lines 19 and 111, respectively); and use of "restabelecimento" (line 172) as a translation for "re-enactment" (line 161), instead of *nova promulgação*.

c) Lack of lexical repetition present in the ST in order to restrict interpretation.

E.g.: "the *said* payment" (line 33) is translated as "o *referido* pagamento" (line 34);

"the *said* Work" (line 56) is translated as "o trabalho *acima mencionado*" (line 60); "the *said* Work" (line 104) is translated as "do *tal* Trabalho" (line 110); "*said* payments and royalties" (line 111) is translated as "pagamentos e direitos autorais *acima referidos*" (line 118).

Textual means:

Theme dynamics:

a) Omission of the anaphoric reference conveyed by the pronoun "their" (line 148).

This omission cannot be considered a mismatch because it is made to conform the text to the structure of the Portuguese language;

b) Change in theme-rheme sequence in the translation of "arbitration of two persons (one to be named by each party)" (line 157) as "à arbitragem de duas pessoas (cada parte nomeará uma)" (line 168). This change disturbs the natural flow of the text since the alteration of the sequence *person-person-party* to *person-party-person* gives the impression the text is somehow broken.

c) Lack of repetition of lexical items that function as key words expressing the contractual relationship between the parties.

E.g.: "Due" is translated as "pagável" (line 33), "devidas" (line 105), "à vencer" (line 117), and "a receber" (line 143); "notice" is translated as "avisos" (line 104) and "notificações" (line 128).

Iconic linkage:

a) Structural parallelism between the clauses "wherever necessary" (line 69) and

"wherever possible" (line 79) is broken with the insertion of unnecessary word "seja":
 "sempre que seja necessário" (line 73) and "sempre que possível" (line 85).

OVERTLY ERRONEOUS ERRORS

1. Several breaches of the target language system can be observed:

1.1) *Cases of ungrammaticality:*

a) Insertion of reflexive pronoun "se" (lines 129 and 162) in connection with the non-pronominal verb *reverter*;

b) Wrong choice of preposition in "comprometem-se em assegurar" (line 85), and "para assegurar" (line 78). Suggested alternatives: "a" and "por", respectively.

The use of "para" (line 78) allows for the interpretation that the Publishers shall be responsible for paying any fees required for ensuring that appropriate acknowledgment is made, and not that they will be responsible for such acknowledgment, and that there is no payment of fee connected to the acknowledgment;

c) Use of substantive "caso" (line 130), which introduces an element of uncertainty that is not present in "upon being called" (line 122);

d) Lack of subject/verb agreement in the use of feminine/masculine words and vice-versa.

E.g.: "Universidade" (line 5) + "representado" (line 8); "qualquer nota de direito autoral impresso" (line 91); and "deverão publicá-lo" (line 51), referring to "a Tradução do Trabalho" (line 48); "restabelecimento desta" (line 172), referring to "Ato de Arbitragem" (line 171);

e) Wrong verb form.

E.g.: "Caso os Editores não cumprirem" (line 52), instead of "cumpram"; "que os Proprietários poderão fazer" (line 57) and "que ... a impressão, papel e encadernação da Tradução será" (line 85), in which cases the present subjunctive forms *possam* and *seja* are respectively required.

The phrase "The Publishers agree to include" (line 63) is translated as "Os Editores concordarão em incluir" (line 68), thus changing the time of the action. In using the present tense, the ST implies that the permission to include new manuscripts and/or illustrations is given upon the signature of the contract, and that such permission does not depend on any other document, as implied by the TT.

In addition, there is the wrong choice of participle "exprimidos" (line 127), instead of *expressos*, in a sentence in which the verb *estar* is implicit, requiring the use of the irregular participle.

The translation of "payments" (line 117) as "pagamento" (line 124) creates a problem of verb agreement in "Caso qualquer conta ou pagamento aqui especificados estejam" (line 124), because the subject "conta *ou* pagamento" requires a third person singular verb form;

f) Lack of agreement in the use of singular/plural words and vice-versa.

E.g.: "manuscrito e/ou ilustrações proporcionado" (line 70)

g) Wrong verb tense.

E.g.: "if they *have failed* to publish" (line 94) translated as "caso *não consigam*

publicar" (line 99).

h) Lack of commas required in Portuguese in cases in which there are appositional phrases, creating ambiguous sentences.

E.g.: lack of comma after "façam" (line 157) does not place the sentence "através de carta ... Contrato," (line 157) in apposition. This omission creates the impression that the Publishers are to rectify the said failure by a registered letter, and not that it is the *notice* that has to be sent by registered letter.

Another appositional phrase is not treated as such in the TT, and the result is that a stilted sentence is given: the phrase "forthwith upon being called upon so to do" (line 122) is an appositive, and should have been translated as such. Instead, it was joined to the following sentence, creating the endless sentence "O Editor compromete-se imediatamente, caso seja chamado para executar qualquer documento formal exigido para dar efeito às disposições deste parágrafo." (lines 129/132);

i) Omission of required article *a* in "em convênio com University Ltd." (line 93);

j) Lack of direct object for transitive verb *comprometer* in "O Editor compromete-se imediatamente, caso seja" (line 129);

k) Inadequate insertion of preposition "com" (line 154) in connection with verb *cumprir*, which does not require a preposition;

1.2) *Cases of dubious acceptability:*

a) Use of an awkward phrase in the translation of "the said respective dates" (line 109) as "das respectivas datas mencionadas" (line 115). Maybe, for the sake of style the

translator could have omitted the word *respectivas*, and translated the phrase as *das datas mencionadas*, or maybe s/he could have used *daquelas respectivas datas*;

b) The translations of "of the One Part" (line 10) and "of the Other Part" (line 13) create the very unusual phrases "de Uma das Partes"(line 10) and "da Outra Parte" (line 14). It seems the translator should have chosen a non-literal translation and used the most common forms *de um lado* and *de outro lado*;

c) The pronoun *alguma* could have been used instead of "qualquer" (line 91) because although both refer to an undetermined quantity, it seems the pronoun is used in the ST meaning *some notice* and *not any notice at all*. Saying that "deverá constar qualquer nota" (line 90) may open grounds for a very wide range of interpretation;

d) Although the term "duplicata" (line 81) may be synonymous with "duplicado" (Ferreira, 1986:613), its use produces an awkward phrase in "material de produção duplicata" (line 81), because it gives the impression that what is duplicate is the production, not the material. This interpretation would have been prevented if the translator had used *duplicado*. It would have also prevented any possible confusion with the negotiable instrument called *duplicata*, since the word is more commonly used in Portuguese with this meaning;

e) Use of the expression "1 de março" (lines 51 and 53) instead of "1º," the form used to refer to the first day of a month (Ferreira, 1986:1392);

f) Although the expression "provided that" (line 163) is commonly used to introduce a conditional sentence, it seems that this is not the writer's intention in that case, otherwise the sentence would not make sense.

The context allows for the interpretation that submittance of a dispute between the parties to English courts will only happen in case arbitration does not resolve any difference between them. Hence, submitting any matter to those courts is a consequence, not a condition.

In that perspective, maybe the translator should have been more daring and moved a little from the original meaning of the expression, in order to produce a more meaningful sentence. Thus, instead of using "contanto que " (line 173), s/he could have used *sendo que*;

g) Literal translation of "the Proprietors are the proprietors of" (line 15) as "os Proprietários são os proprietários do" (line 15), creating a sentence which sounds awkward in Portuguese.

h) Use of "corretamente e fielmente" (line 49) instead of the more euphonic form *correta e fielmente*;

i) Use of unnecessary lexical repetitions which disturb the natural flow of the text.

E.g.: "estejam *relacionadas* às vendas e recibos em *relação*" (line 136); "de *receber* todas as quantias a *receber*" (line 142).

j) Literal translation of "any Third Party Copyright material from the Work" (line 70) producing the inaccurate phrase "qualquer material de Direito Autoral de Terceiros do Trabalho" (line 75), which makes the reader wonder who the *Terceiros do Trabalho* are. Suggested alternative: "qualquer material da Obra que seja 'copyright' de Terceiros."

2. There are a number of mismatches of the denotative meanings of ST and TT items which can be classified as wrong selections, omissions and ambiguities:

Wrong selections:

a) The TT uses the term "direitos autorais" (lines 40 and 42) as a translation for "royalty" (lines 39 and 41). It seems the Translator is confusing *royalty* with *copyright*. Royalty is a *type of commission* paid to the owner of copyright on a book, while copyright is the *right* the creator of a book holds on his book.

It is suggested that the term remain untranslated, since it is a term largely used by those dealing with contracts.

b) Translation of "the Law of England" (line 166) as "a Lei da Inglaterra" (line 178) which may suggest that the text is referring to a (hypothetical) British Constitution, and not to the whole body of English laws. Hence, maybe a better translation for the expression would be *as leis da Inglaterra* or *a legislação inglesa*;

c) The term "Trabalho" (lines 16, 18, etc.) seems to be an inadequate translation for "Work" (lines 15, 18, etc.). The meaning of *Work* in this context is *literary work* and as such, the Portuguese word *obra* seems to be a better rendering for the term;

d) The translation of "execute" (line 123) as "executar" (line 130) does not seem to offer an exact rendering of the English term in the context it appears. The term *executar* is more commonly used as a legal term in Portuguese with the meanings of 'to kill as a legal punishment' or 'to foreclose a mortgage or the like', none of which apply in the context. Suggested alternative: "emitir;"

e) The expression "Ato de Arbitragem" (line 171) does not convey the idea that the writer is referring to a type of legislation, as it seems clear in the English expression "Arbitration Act" (line 160). The word *ato* is usually used in Portuguese in the sense of

action, not in the sense of "a law or formal decision" (Procter, 1995: 13).

f) Wrong word choice when translating "in either event" (line 149) as "em ambos os casos" (line 159). The conjunction *either* refers to "one *or* the other of two" (Procter, 445, my emphasis), while *ambos* means "um e outro; os dois " (Ferreira, 1986:102).

g) The translation of the title of the book as "Guia de Estudos" (line 14) creates the strange situation of making the Proprietors the owners of copyright on a book which does not even exist. Therefore, it seems that the title of the book should have remained untranslated, or that the translation should have appeared in parentheses, after the original title;

h) The word "recuperável" (line 35) does not seem to be appropriate in the context where it appears, because it refers to a hypothesis, that is, something that can (or not) be recovered. In the Contract, the word is used to refer to a very concrete situation: the payment will not be recovered "in the event of any default by" (line 34). Therefore, and in spite of the use of *recoverable* in the ST (line 34), it seems *recuperado* would have been a better choice.

i) The word *further* in the expression "without further notice" (lines 97 and 120) takes a very particular meaning in the context of contracts. Saying that something happens forthwith and without further notice means that it is not required that the party be officially informed of it, because as soon as it happens it becomes effective and binding on the parties. Thus, the word *further* in the expression above does not take the usual meanings of *additional*, *other*, but the emphatic meaning conveyed by the word *any*.

Therefore, the translations of *further* as "futuros" (line 104) and "adicionais" (line 128) do not convey that emphatic meaning. Suggested alternative: "qualquer."

j) Inadequate translation of "issued" (line 38) as "distribuídas" (line 39) instead of *publicadas*; "at any time" (line 93) translated as "eventualmente" (line 98), instead of *em qualquer época* or *a qualquer momento*; "go out of print" (line 94) translated as "não seja impressa" (line 99), instead of *se esgote*;

k) The inadequate translation for phrasal verb "dispose of" (line 100) as "vender" (line 106) may create serious interpretation problems. In the context, *dispose of* means "to transfer or part with, as by giving or selling" (Morris, 1975:380). Thus, when affirming that "Os Editores não poderão vender quaisquer Direitos" (line 106), it is implied that they can do any other thing with such rights, such as donate, transfer or assign them. Suggested alternative: "alienar."

Another instance of inadequate translation which may create problems is the translation of "due" (line 111) as "à vencer" (line 117). If any kind of payment is *a vencer* it means it is not yet due. Thus, when translating "shall ... pay any sums shown thereby to be due" (line 110) as "deverão ... pagar quaisquer somas apresentadas à vencer" (line 114) a paradoxical situation is created: the Publishers become obliged to pay for sums which are not due yet. Suggested alternative: "devidas."

Similarly, another translation of the word *due* may be considered inadequate: "at the time the statement is due" (line 113) is translated as "na ocasião do vencimento do extrato" (line 120). As a statement does not usually have a *vencimento*, the reader will probably have to reread the text in order to establish a relation between the *vencimento* and the dates mentioned in the beginning of the clause. Suggested alternative: "for

devido."

Another instance of inadequate translation is observed in the translation of "extended" (line 136) as "prorrogada" (line 145). The verb *extend* does not have the restrictive meaning of "make something last beyond a pre-established period of time" that characterizes the verb *prorrogar* (Ferreira, 1975:1404, my translation). Suggested alternatives: "ampliada," "estendida."

Furthermore, the noun "acknowledgment" (lines 73 and 86) receives two equally inadequate translations: "conhecimento" (line 79) and "notificação" (line 92). Suggested alternatives: "crédito" or "crédito de copyright".

l) The misinterpretation of the term *same*, which in the ST refers to "difference" (line 154) may cause interpretation problems. In the TT, the term is translated as "as mesmas" (line 168), and refers to *parties*. Thus, in the TT it is stated that "as mesmas deverão recorrer à arbitragem de duas pessoas" (line 168), which suggests that both parties shall resort to arbitration. However, in the ST it is stated that the difference shall be referred to arbitration, but it does not mention anything as to *who* should refer the difference to arbitration, which allows for the interpretation that it can be done by any of the parties, or by both. Suggested alternative: "a mesma será encaminhada à arbitragem."

m) Wrong translation of "title page" (lines 83 and 84) as "página de rosto" (lines 89 and 90). The term *página de rosto* refers to that blank page some books contain and which comes before the title page. Therefore, no acknowledgment can be made on a blank page. Suggested alternative: "página de título;"

n) Inadequate use of [+ abstract] term "proporcionado" (line 70), referring to material items such as manuscripts and/or illustrations. Suggested alternative: "fornecidas."

o) Inadequate translation of "remaining" (line 66) as "serão" (line 72), which implies the manuscripts and/or illustrations are not the copyright of the Proprietors already. Suggested alternative: "permanecerão."

2.2) Omissions:

a) Omission of derivatives from *here* and *there* creating instances of ambiguity, as described in *Medium*, above;

2.3) Ambiguities:

a) The translation of the preposition "for" (line 72, second instance of "for") as "para" (line 78) also creates ambiguity, as explained in 1.1 b), above.

Statement of Quality

The comparison of ST.1 and TT 1.2 indicates that the TT presents numerous mismatches in the dimensions *Medium*, *Social Role Relationship*, *Social Attitude* and *Province*.

In the dimension *Medium*, the TT seems less close to the *written mode* than the ST, as evidenced by certain features such as the omission of derivatives from *here* and *there* and the use of [- formal] renderings for some [+ formal] terms and expressions, etc. Clearly, the ideational component of the text's function is violated in this dimension. The interpersonal component is also compromised because the characterization of the text as

a written text is not fully realized in the TT.

In *Social Role Relationship*, the TT fails to maintain the symmetrical relationship between the writer of the contract and his readers, in prejudice of the interpersonal functional component. The TT also lacks some counterparts for legal terms in Portuguese - therefore, the ideational functional component is also impaired in this dimension.

The mismatches in *Social Attitude* render the TT much [- formal] than the ST, and clearly weaken the ideational component. These mismatches also alter the interpersonal functional component by making the TT less distant and intimidating.

In the dimension *Province*, the ideational component of the text's function is not fully preserved. The mismatches in this dimension clearly alter the province *contract between two parties in which one party has the supremacy over the other*. For instance, the inconsistent translation of the modal verb *shall* clearly detracts from the illocutionary force of order implied in the ST. This deficiency also detracts from the interpersonal functional component for it affects the relationship between the parties. The interpersonal component is infringed upon by the mismatches presented in the *textual means*, such as the lack of repetition of lexical items, which leave out of the TT the emotional impact present in the ST.

The many breaches of the target language system, as well as the mismatches of denotative meaning are considerably responsible for affecting the ideational component. The information is not imparted clearly and efficiently, and it seems the reader constantly has to reread parts of the contract to be able to understand it. All the overtly erroneous errors also detract from the interpersonal component because they interfere

with the writer's intention to make an explicit and impersonal text, in which the connotation of order is visible throughout the whole text.

To sum up, both the ideational and the interpersonal components are violated to a considerable extent in four dimensions, and mainly in the *overtly erroneous errors*, in the instances specified above.

3.2.4. Analysis of Translation Text no. 1.3

COVERTLY ERRONEOUS ERRORS

The TT presents mismatches in the following situational dimensions:

DIMENSIONS OF LANGUAGE USE:

MEDIUM

Syntactic means:

a) Absence of a [+ formal] translation for "Should any account" (line 117), which is translated as "Caso qualquer conta" (line 117). Maybe, with the use of *na hipótese de* the degree of formality would have been maintained.

Lexical means:

a) Two of the [+ archaic] derivatives from the adverbs *here* and *there* receive inadequate translations. Take the case of "hereto" (line 163), translated as "partes ao presente" (line 167). In Portuguese, those who are part of something are *parte de* and not *parte a*.

In the case of "thereafter" (line 95) translated as "após isso" (line 93), the translator

uses a much [- formal] construction than the one used in the ST.

b) There are two instances of omission apparently to conform to the structure of the Portuguese language: "their" (lines 148 and 158); and "a" (line 147). It seems these omissions improved the text in Portuguese, and thus they cannot be considered mismatches.

Also for the sake of style, some other omissions could have been made by the translator. For instance, the articles "a" (lines 19 and 128), "um" (lines 37, 39 and 45), and the pronoun "eles" (lines 92 and 133) are unnecessary in the contexts they appear. In addition, "por" (lines 173 and 176) could have been omitted, because both *for* and *on behalf of* (lines 171 and 176) in the context mean *representing* someone.

There are some omissions which do not alter the denotative meaning of the sentence, but detract from the explicitly formal tone used in the ST. Take the cases of "advance" (line 45); "that are" (line 59); and "due" (line 133).

On the other hand, some omissions are likely to cause interpretation problems. Take the case of "statutory" (line 161). In using this word, the ST wants to make sure only modifications which are prescribed by law may be accepted. However, TT's "qualquer posterior alteração" (line 165) means exactly what is written, that is, *qualquer alteração*, not only statutory modifications.

Another omission that may cause problems because in any contract the parties must be clearly identified is the omission of the word "Brazil" (line 6).

c) Two insertions are made which provide for a clear and fluent text: "por parte" (line 33) and "farão" (line 60).

The insertion of "de" (line 164, second instance) referring to the year of publication of the law, creates an unambiguous sentence which does not correspond to the ambiguous sentence in the ST. However, since it is probable that the number refers to the year of publication of the law, and not to the number of the law, the insertion cannot be considered a mismatch.

On the other hand, some insertions create unnecessary repetition of lexical items. Take the cases of "possível" (line 80), in close position to "possível" (line 79); "*na lombada e na folha*" (lines 81 and 82); and "*qualquer* conta ou *quaisquer* pagamentos" (line 117).

d) The ready-made string "prior written consent" (lines 101 and 139) is not maintained in the TT, and receives two different translations: "consentimento escrito" (line 100) and "prévio consentimento escrito" (line 142).

e) Lack of the legal term in Portuguese for "notice" (line 120), as stated in *Social Role Relationship* below.

Textual means:

a) Omission of the local reference expressed by the term "Brazil" (line 7).

SOCIAL ROLE RELATIONSHIP

Lexical means:

a) One legal term in the ST is not translated by its legal counterpart in Portuguese: "notice" (lines 120 and 146) is translated as "comunicação" (line 122) and "aviso" (line 150), instead of *notificação*.

SOCIAL ATTITUDE

Syntactic means:

a) The TT maintains the noun phrase "the Publishers being declared bankrupt" (line 143), and it is translated as "os Editores serem declarados falidos" (line 147). However, this does not seem to be a commonly used expression, and with this rendering of the phrase the TT loses in quality. *No caso de falência dos Editores* would be the commonly used form.

Lexical means:

a) Use of a [- formal] term than the one used in the ST: "commencement" (line 149), translated as "ao início" (line 152), instead of [+ formal] *termos iniciais*;

b) Use of a [- formal] expression than its counterpart in contracts in Portuguese: "other than those" (line 140) translated as "a não ser os" (line 144), instead of *salvo aqueles*;

c) Lack of the legal term in Portuguese for "notice" (line 120), as stated in *Social Role Relationship* above.

d) Use of [+ formal] expressions in the TT than their counterparts in the ST.

E.g.: use of "no que diz respeito ao" (line 159), as a translation for "touching" (line 155); use of "celebrado" (line 3), as a translation for "made" (line 3), instead of *realizado*. In fact, in the last example, had the ST wanted to use a [+ formal] term, the expression *entered into* would have been used.

e) Omission of [+ formal] words and expressions.

E.g.: "that are" (line 59); and "statutory" (line 161).

PROVINCE

Graphical means:

a) The word *Proprietários*, meaning one of the parties to the contract is not capitalized in many instances: lines 42, 54, 56, 97, 132. This non-use of capitalization jeopardizes the fast and easy identification of the parties involved in the contract. The same holds true for the non-capitalization of "Editores" (line 141).

Although capitalized in the ST, the expressions "por um lado" (line 9) and "por outro lado" (line 12) do not take capital initials in the TT. This cannot be considered a mismatch because there is no plausible reason for such capitalization in the Portuguese language.

In addition, the word "Cópias" (line 104) is unnecessarily and mistakenly capitalized. Maybe in a final careful reading of the TT, such capitalization would have been taken out.

b) Although bold-face type is used to highlight three phrases in the ST, there is not a single use of it in the TT. Hence, this useful resource in the fast identification of a contract is lost in the TT;

c) The TT does not highlight the name of the Work, which appears in the middle of a sentence (line 14), without the prominence found in the ST.

Lexical means:

a) The cases of non-utilization of precise legal terminology reported above, though

few in number, jeopardize the writer's intention to create a legal text;

b) Presence of one instance of alliteration: "feita de forma fiel" (line 45). Although this is a device usually used to make a text sound poetic or attractive, most probably that has not been the translator's intention, but it occurred casually or due to lack of a careful review of the TT.

Textual means:

Theme dynamics:

a) Omission of the anaphoric reference conveyed by the pronoun "their" (lines 148 and 158). These omissions cannot be considered mismatches because they are made to conform the text to the structure of the Portuguese language, and in fact they end up improving the TT;

b) Use of synonymy to avoid repetition of "proprietors" (line 15). The phrase "os Proprietários são detentores do direito de propriedade" (line 13) makes the text flow in a much better way than *os Proprietários são proprietários*;

c) Change in theme-rheme sequence with the change of the appositional structure "in respect of any edition of the said Work published by them" (line 103) to an initial position in the paragraph "Em relação a" (line 102). The expression "The Publishers" (line 103) which occupied a thematic position in the ST becomes part of the rheme in the TT.

Iconic linkage:

a) Structural parallelism between the clauses "wherever necessary" (line 69) and

"wherever possible" (line 79) is broken in the two different translations for such phrases: "quando necessária" (line 67) and "sempre que possível" (line 78).

OVERTLY ERRONEOUS ERRORS

1. There are several cases of breaches of the target language system:

1.1) *Cases of ungrammaticality:*

a) Wrong choice of preposition in "para assegurar" (line 72). According to the clause the preposition is inserted in (lines 71/74), the translation of *for* as *para* creates the idea that the Publishers will pay fees for obtaining the permissions and also for ensuring that acknowledgment is made. However, it is clear in the ST that the payment of fees relates only to the permissions that have to be obtained. Suggested preposition: "por."

b) The word "início" (line 152) in Portuguese requires the preposition *em*. Thus, using the necessary contraction of preposition *em* with article *o*, the grammatically correct form would be *no início*, and not *ao início*.

c) Lack of subject-verb agreement in the following cases: singular subject "Editor da Universidade" (line 8) + 3rd person plural verb "denominados" (line 9), with an identical mistake in line 11; plural subject "Editores" (line 44) + 3rd person singular verb "publicará" (line 46). This mistake creates the bizarre situation of making the reader think the translator shall publish the work;

d) Lack of agreement in the use of gender: "quatrocentos libras" (line 27); "volume da Tradução publicada" (line 82), giving the impression that what is published is the translation, not the "copy of the Translation" (line 83);

e) Wrong use of a singular pronoun with a plural noun in "qualquer dos dispositivos" (line 148), instead of *quaisquer*;

f) Wrong addition of the pronoun "os" (line 130), with the consequence of using the 3rd person singular verb "concerne" (line 130) for the plural noun "registros" (line 129);

g) Wrong addition of the pronoun "se" (line 99). The verb *dispor* takes a direct object and since there is already a direct object in the sentence, it is not a pronominal verb in this case;

h) Misuse of future tense "será" (line 168) in a position where subjunctive *seja* is needed, due to the use of the expression "contanto que" (line 166).

i) Wrong use of article in "partes a ele" (line 160) and "partes ao presente" (line 167). In Portuguese, those who are part of something are *parte de* and not *parte a*.

1.2) *Cases of dubious acceptability:*

a) The verb *fazer* seems to collocate better with *reivindicação* than the verb "ter" (line 52);

b) The phrase "disporão do direito" (line 128) makes use of an unusual collocation for the word *direito*. In Portuguese, one usually *tem* or *goza de um direito*. The verb *dispor* is more commonly used meaning *make use of* or *have the possession of*. A literal translation for "shall have the right" (line 126) as *terão o direito*, would have produced a better rendering for that phrase.

b) The unnecessary use of "a" (line 128) leads the reader to asking him/herself *Which one?*;

c) The pronoun *algum* could have been used instead of "qualquer" (line 84) because although both refer to an undetermined quantity, *algum* is usually used when the pronoun *any* is used with the meaning of *some*. Saying that "constará qualquer aviso" (line 83) may open grounds for various interpretations;

d) The expression "em duplicata" (line 74) though necessary in some other cases, could have been substituted by *duplicado*. Doing this, the translator would have prevented any possible confusion with the negotiable instrument called *duplicata*, since the word seems to be more commonly used in Portuguese with this meaning;

e) The unusual expression "em ou antes de 1º de março de 1995" (line 48) could have been substituted by *até 1º de março de 1995, inclusive*;

f) The unnecessary insertion of "um" (lines 37 and 39) creates awkward sentences, since the emphasis on the number is designed to make clear it is not *two* or *three*, or even more. However, such emphasis is totally unnecessary in the context. Besides, if the ST had wanted to emphasize the number, the determiner *one* would have been used;

g) The literal translation of "For and on behalf of" (lines 171 and 176) produces an awkward phrase in Portuguese: "Por e em nome de" (lines 173 and 176).

h) Although the ST uses the expression "provided that" (line 163) it does not seem the writer's intention was to produce a conditional sentence, otherwise the sentence would not make sense. If the submittance of a dispute between the parties to English courts will only happen in case arbitration does not resolve any difference between them, submitting any matter to those courts is a consequence not a condition. Hence, maybe the translator should have moved a little from the original meaning of the expression, in

order to produce a more meaningful sentence. Suggested alternative: "sendo que."

2. The mismatches of denotative meaning found can be subclassified into wrong selections, omissions and ambiguities.

2.1) *Wrong selections:*

a) The term "jacket" (line 83) is mistakenly translated as "lombada" (line 82), instead of *sobrecapa*. This mistake could have been avoided if the translator had noticed that it could not be reasonable to require the insertion of the whole name of the Proprietor in the *lombada* of the book;

b) The use of the singular form "a lei da Inglaterra" (line 171) does not seem to match the writer's intention to refer to the whole body of English laws, conveyed in the expression the Law of England (line 166). Suggested alternative: "as leis da Inglaterra;" or "a legislação inglesa";

c) The translation of "execute" (line 123) as "assinar" (line 124) seems to restrict the scope of interpretation. As a legal term, *execute* can have the meaning of *assinar* (Goyos Junior, 1994:110), but it can also have the more encompassing meanings of "1. to complete, as a legal instrument; 2. to perform what is required" (Gifis, 1993:167). When using the restrictive term *assinar*, the translator exempted the Publishers from the obligation of making or issuing the document, what does not seem to have been the writer's intention. Suggested alternative: "emitir;"

d) Wrong translation of "Proprietors" (line 90) as "Editores" (line 87), which makes the reader ask him/herself *shall be sent by whom?*, and which makes the entire clause void;

e) Wrong translation of "and" (line 99) as "ou" (line 96), giving the two propositions involved an alternative character which is not present in the ST;

f) Wrong translation of "sixty" (line 108) as "seis" (line 107), anticipating considerably the deadline for delivering the statements of accounts;

g) The translation of the title of the book as "Guia de Estudos" (line 14) makes the Proprietors the owners of copyright on a book which does not exist. Therefore, as mentioned before it seems the translator should have maintained the title of the book in English, or the translation should have appeared in parentheses, after the original title;

h) The word "reembolsável" (line 32) does not seem to be appropriate because it refers to a hypothesis, that is, something that can (or not) be recovered. In the contract under study, the word is used to refer to a very concrete situation: the payment will not be recovered "in the event of any default by" (line 34). Therefore, and in spite of the use of "recoverable" in the ST (line 34), it seems *reembolsado* (or *recuperado*) would have been a better choice.

i) The word "ineficiente" (line 155) seems to be a poor choice for "void" (line 150), and does not convey the idea suggested by the expression *null and void*. This expression makes it clear that the contract will stop being effective, that is, it will produce no legal effect if the conditions imposed are not fulfilled. The word *ineficiente* does not commonly have the same use in legal affairs. Suggested alternative: "ineficaz";

j) The word *further* in the expression "without further notice" (lines 97 and 120) takes a very particular meaning in the context of contracts. Saying that something happens without further notice means that there is no need to officially inform the parties

about it. Thus, the word *further* in the expression above does not take the usual meanings of *additional*, *other*, but the emphatic meaning conveyed by the word *any*. Therefore, the translation of *further* as "outro" (line 96) gives the undesired impression there has been another notice before. Maybe the translator could have used the word *qualquer*, as in fact s/he did in another instance of translation of the same expression (line 122).

2.2) Ambiguity:

a) The translation of the preposition "for" (line 72, second instance of "for") as "para" (line 72) creates an ambiguous sentence, as explained in 1.1 a), above.

Statement of Quality

The comparison of ST.1 and TT 1.3 along the situational dimensions indicates that there are mismatches in four dimensions.

The few mismatches in the dimension *Medium* detract from the ideational component in that some features of the *written mode* are not present in the TT. This deficiency also jeopardizes the interpersonal component for the TT does not utilize features intentionally used by the writer of the text.

The mismatch in *Social Role Relationship* deriving from the inadequate translation of one legal term jeopardizes the ideational component of the text's function. This mismatch also detracts from the interpersonal functional component in that the degree of symmetry existent in the ST is not maintained in the TT.

The degree of formality present in the dimension *Social Attitude* in the ST is not

fully matched in the TT. The use of some [- formal] terms than their counterparts in the ST weakens the ideational component and also alters the interpersonal component, for they change the degree of social distance existent in the ST.

In the dimension *Province*, the TT presents several mismatches. The emphatic effects displayed in the ST through theme-rheme positioning and structural parallelism were not matched in the TT. The non-utilization of the graphical means present in the ST detracts from the interpersonal component by lessening the potential emotive impact of the text. This omission weakens both components of the text's function.

Although the *overtly erroneous errors* found in the TT do not affect the global meaning of the text very seriously, they are detrimental to the ideational functional component and exert a certain impact on the interpersonal component. Such errors reduce the clarity and preciseness of the text, and in doing so they clearly weaken the interpersonal component of the text's function.

In brief, the mismatches and *overtly erroneous errors* found in the TT indicate that both ideational and interpersonal functional components have been violated.

3.3 SECOND TEXT: PASSENGER SALES AGENCY

AGREEMENT

3.3.1 Analysis of Source Text

1 - DIMENSIONS OF LANGUAGE USER:

(1) Geographical Origin: The text contains mixed spelling, that is, some words are written in British English, while others use the American spelling. For instance, the word

"fulfilment" (line 291) takes the British spelling, which has only one "l" before the suffix. Another word taking the British spelling is "notarised", with "s" (line 393). The word "authorize" uses the American spelling with "z" in several instances (lines 78, 84, 85), but is spelled the British way with "s" in some other instances (lines 76, 96, 332). On the other hand, "Coordinator" (line 172) takes the American non-hyphenated form.

Whether using British or American English, the standard form of the language is the form chosen.

(2) Social Class: non-marked, the language as used by the Educated Middle Class.

(3) Time: non-marked, contemporary English, in spite of the use of [+ archaic] derivatives of *here* and *there*.

2 - DIMENSIONS OF LANGUAGE USE:

(1) MEDIUM: simple - written to be read. The following linguistic means are used to characterize the medium:

Syntactic means:

a) Placing of a subordinate clause before the main clause.

E.g.: "with regard to any transportation ... under appointment" (line 97); "In the event that the Agent is declared in default or is suspended in accordance with the Sales Agency Rules" (line 161);

b) Ample presence of passive voice.

E.g.: "The Agent shall be notified by the Agency Administrator" (line 58); "This

Agreement shall not be assigned ... by the Agent" (line 262);

Use of agentless passive constructions: "notice of termination of the Agreement as above may be given at any time" (line 284); "a Traffic Document shall be issued immediately money is received by the Agent" (line 181);

c) Presence of long appositional structures requiring the written mode.

E.g.: "including applicable remuneration which the Agent is entitled to claim thereunder" (line 189); "in regard to any matter of dispute arising solely in connection with the activities of a branch office location situated in a place other than that of the Agent's principal place of business" (line 354); "including the Settlement Plan Management where applicable" (lines 240 and 247);

d) Absence of contractions, deletions of endings, and specific spoken language signals such as *you know*, *well*, which are used as rhetorical devices to give the impression of spontaneity. Absence of anacolutha, clause initial *and*, *but*, and 1st and 2nd persons personal pronouns.

e) Presence of prepositional verbs.

E.g.: "acting for and on behalf of such TA Member" (line 11); "damage is caused or contributed to by the Agent" (line 322);

f) Absence of alternating affirmative, interrogative and imperative sentences;

g) Presence of [+ formal] structure with *upon*.

E.g.: "Upon coming into effect this Agreement" (line 19); "the Carrier upon appointment of the Agent" (line 16);

h) Use of parenthetical structure to enlarge or restrict interpretation.

E.g.: "(and other provisions derived therefrom)" (line 29); "(including by means of reservation alteration stickers)" (line 108);

i) Use of a post-nominal modification which results in the separation of subject from its predicate, a structure that is typically used in the written language.

E.g.: "Traffic documents deposited by the Carrier or by the Settlement Plan Management on behalf of the Carrier as the case may be, are and remain" (line 137);

j) Use of [- human] complex noun phrases.

E.g.: "automated ticketing system for the issuance of neutral Traffic Documents" (line 324); "prior Passenger Sales Agency Agreements" (line 369);

k) Prepositional use of an adverbial syntagm, a structure which seems to be typical of the written mode of a language.

E.g.: "for the sale of air transportation and ancillary services by the Agent under this Agreement the Carrier shall remunerate" (line 220);

Lexical means:

a) Absence of subjectivity markers such as interjections, vulgarisms, etc.

b) Presence of [+ archaic] derivatives from the adverbs *here* and *there*.

E.g.: "herein" (lines 22 and 61), "hereinafter" (lines 7 and 9), "hereof" (lines 45 and 374); "hereto" (lines 23, 371, 376 and 379); "hereunder" (lines 200 and 308); "hereby" (line 296); "thereunder" (lines 190 and 299); "thereof" (lines 49 and 332); "therein" (line

298), and "thereto" (lines 20, 58, and 174);

c) Presence of ready-made strings frequently used in written contracts.

E.g.: "including but not limited to" (lines 51 and 81); "unless the context otherwise requires" (line 66); "without prejudice to" (lines 290 and 372); "except to the extent required by law" (lines 243 and 258); "in whole or in part" (line 263); and "by notice in writing" (lines 63 and 285).

Textual means:

a) Presence of a high degree of elaborateness. The text has a logical structure which makes it easy for the reader to identify its subdivisions, and locate the item desired. The text is characterized by a heading and is divided into items, which in turn are subdivided into sub-items;

b) Phrases and paragraphs are linked by anaphoric references, such as "under Subparagraph 2.1 of this Paragraph and any of the provisions of this Agreement" (line 71); "notwithstanding Subparagraph 11.1 of this Paragraph" (line 245);

c) The text is predominantly etic, i.e., it contains temporal and local deictics that link the text to the situation of its production and reception. That situation is relevant to the organization of the message, which is characterized by a well planned, logical structure.

In addition, the text contains extra-textual references, such as "TA Resolutions" (line 41), "Standard Traffic Documents" (line 156), "Sales Agency Rules" (line 17), "Travel Agent's Handbook" (line 31), and "Settlement Plan rules" (line 36).

Temporal deictics: "current edition of the Handbook" (line 48); "until duly issued" (line 140); "shall immediately cease" (line 164); "not yet collected" (line 197)

Other temporal references: "within 30 days of receipt" (line 61); "15th day of December 1993" (line 3); "two years from the date of the transactions" (line 233); "as of the date first written above" (line 377);

Local deictics: "its office" (line 132); "the Agent's Location(s)" (line 18);

Other local references: "in the USA" (line 372); "U.S.A." (line 382); Brazil (line 6); "in the territory or territories where the Approved Locations of the Agent are situated" (line 122); "principal place of business of the Agent" (line 353);

d) Lack of redundancy. Although some terms are repeated throughout the text, this repetition does not seem to provide redundancy.

It is possible that the frequent repetitions of terms like "Carrier" (lines 16, 28, 45, etc.), "Agent" (lines 15, 47, 62, etc.), "Agreement" (lines 15, 44, 76, etc.), "Handbook" (lines 31, 48, 57, etc.) and "Sales Agency Rules" (lines 17, 40, 286) only aim at safeguarding against undesirable interpretation and clearly identifying the parties and the documents they are legally bound to.

(2) PARTICIPATION: Simple - monologue.

In the text the addressees, that is the parties to the contract, are treated as third persons. This feature can be confirmed by the following syntactic means: absence of first and second person singular pronouns, vocative phrases, interrogative sentences, and almost exclusive use of declarative sentences. None of the parties to the contract is directly addressed by the writer, a fact which characterizes the text as a monologue. In

fact, in only one instance, at the end of the contract, the Agent is asked to participate. The use of the imperative form in "please indicate below" (line 389) elicits such participation. However, the Agent's participation is only required if the Agent's address is incorrect.

In addition, as commented previously, although a modal auxiliary expressing obligation (*shall*) is used throughout the text, requests which would suggest addressees' participation are not put to addressees. The use of modal verbs is not indicative of addressees being invited to participate because the parties of a contract are not invited to do anything, but are obliged by contract to perform their obligations.

(3) SOCIAL ROLE RELATIONSHIP

The text reveals three types of role relationships which may be detailed as follows:

(3.1) The relationship between the writer of the contract and its readers, who may be any person who reads the contract such as a lawyer, a government official, a translator, etc., other than the contracting parties.

Symmetrical role relationship: Although the addresser does not try to express any kind of solidarity or intimacy towards the addressees, the relationship can be considered a symmetrical one. The addresser is an abstract figure who is not identified in the text, and therefore, s/he does not show any type of authority over the addressees, who are the general readers. The highly impersonal, detached tone of the text demonstrates that the content of the text is given priority, and that the relationship between addresser and addressees is considered unimportant.

The following linguistic means support this characterization:

Syntactic means:

- a) Absence of second person pronouns;

Lexical means:

- a) Utilization of technical terms without additional explanations, a fact which seems to imply a certain degree of equality.

E.g.: "default" (line 162) "waiver" (line 301), "bankruptcy proceedings" (line 202), "receivership" (line 202), and "negligent act" (line 318).

(3.2) The relationship between the writer of the contract and the contracting parties.

Asymmetrical role relationship: In spite of any instructions that the contracting parties may give the writer as to the content of the contract, the writer is the one who holds the legal knowledge to have the contract written. Consequently, s/he is the one who has the professional authority to define what kind of behavior is expected from the contracting parties.

This characterization has been achieved through the analysis of the following linguistic means:

Syntactic means:

- a) Occurrence of sentences with the illocutionary force of order throughout the entire text.

E.g.: "The Agent shall not in any way" (line 90); "The Carrier shall remunerate the

Agent" (line 221).

b) Use of impersonal constructions, such as passive voice (lines 58, 187, 262, etc.), and subjunctive in a that-clause (line 146).

Lexical means:

a) Although the parties have names (lines 5 and 9), they are treated by the impersonal [+ abstract] terms "Agent" (lines 15, 28, etc.) and "Carrier" (lines 16, 45, etc.).

Textual means:

a) The addresser describes the parties' obligations in detail to make sure the parties understand what is expected from them.

E.g.: Clause 4; Clause 5; Clause 7; Clause 9;

(3.3) The relationship between the contracting parties themselves.

Asymmetric role relationship: In spite of the fact that a contract should be a text that conveys mutual consent between two parties, the analysis of the following textual means reveals that one of the parties is clearly in a weaker position.

From the 32 clauses or sub-items contained in the contract, five clauses or items mention the Carrier's rights, while three clauses or items make reference to the Carrier's obligations. On the other hand, four clauses or items refer to the Agent's rights while twenty clauses or items state the Agent's obligations.

If we address these figures in a different way, it is possible to conclude that the

contract contains twenty-five references to the Agent's obligations and seven references to the Carrier's obligations.

For the purpose of investigating the position and situational roles in this dimension, we shall consider only the relationship between the writer of the contract and its readers described under (A) above. The roles performed by the addresser in (B) are similar to those performed in (A), and in the relationship described in (C), at least formally there is no role of addresser.

Position role of the addresser in letter (A) above: Writer of contracts (anonymous).

Situational role: Writer of a Passenger Sales Agency Agreement signed by Agência de Viagens Ltda. and each member of the Transport Association.

(4) SOCIAL ATTITUDE

The text is predominantly characterized by a formal style which reflects the social distance and impersonality in the Social Attitude between the writer of the contract and its readers.

Syntactic means:

- a) Absence of contractions, anacolutha, and elliptical clauses;
- b) Use of devices that give the text an impersonal tone such as passive voice (lines 58, 61, 262, etc.), and the frequency and complexity of noun phrases (lines 324 and 369);
- c) Use of the subjunctive in "The Carrier or Plan Management acting on its behalf may, at any time, require that the Agent return" (line 146);

Lexical means:

a) Absence of items that give the text a personal tone such as interjections, colloquialisms, and words bearing an emotional tone;

b) Ample use of lexical items marked [+ formal] (Procter, 1995).

E.g.: "notwithstanding" (lines 206 and 245); "set forth" (lines 37, 91, and 271); "ascertain" (line 154); "relinquishes" (line 282); "cede" (line 195); "remunerate" (line 222), etc.

c) Ample use of slightly formal lexical items which are commonly used in written or formal spoken language (Procter, 1995).

E.g.: "nevertheless" (line 365); "upon" (lines 16 and 19).

d) Use of formal terms (Procter, 1995) that take a legal meaning in the context they appear, and use of legal terms or expressions (Gifis, 1993).

E.g.: "pursuant to" (lines 141, 295, and 307); "hold harmless" (lines 302, 314 and 328); "without prejudice" (lines 290 and 372); "receivership" (line 202); "audit" (line 152); "notice" (lines 63, 271, 284, 285, 287, 288, 289 and 338); "pledge" (line 195); "arbitration award" (line 299); "Whereby it is agreed as follows" (line 12); "terminates" (line 63); and "rights and liability" (line 373);

Textual means:

a) Highly elaborate and coherent text, which demonstrates it has been written following a pre-established plan;

b) Subdivisions into clauses and items, which help make the text more objective. In addition, the titles in bold add to an objective flow of textual information;

c) Use of long sentences with few or even no punctuation marks, the comprehension of which presupposes an educated reader (lines 58-64; 181-86; 155-61, etc.).

(5) PROVINCE

The text is a Passenger Sales Agency Agreement made between Agência de Viagens Ltda. (*the Agent*), of Brazil, and each Transport Association member (*the Carrier*), whose authorized representative is located in the United States. In this contract, the Carrier authorizes the Agent to sell air passenger transportation on the services of the Carrier and on its behalf, or on the services of other air Carriers as authorized by the Carrier.

The situation of production indicates the supremacy of the Carrier over the Agent, and this is highlighted by certain features in the text (*Social Role Relationship*, above).

The analysis of the following linguistic means confirms the presence of some characteristics which are usually found in contracts, such as the preciseness in defining situations and possibilities, textual cohesion and delimitation of acceptable interpretations:

Graphical means:

a) Capitalization to highlight certain lexical items.

E.g.: "Agreement" (lines 15, 63, 142, etc.); "Agent" (lines 47, 95, 100, etc.); "Sales Agency Rules" (lines 67, 17, 163, etc.); "Carrier" (lines 45, 85, 113, etc.); "Traffic

Document" (lines 92, 106, 148, etc.); "Member" (lines 9, 11, and 133);

b) Use of boldface type in the name of the contract, titles, and note in the end of the contract. This is a useful resource that allows for a faster identification of the contract and its clauses;

Syntactic means:

a) Consistent use of the modal auxiliary verb *shall* to express the mandatory connotation existing in contractual obligations (Maillot, 1975:50).

E.g.: "The Agent shall observe" (line 119); "The Agent shall make" (line 95); "The Agent shall not represent"(line 130);

b) Use of the present tense to express obligations (Maillot, 1975:50).

E.g.: "The Agent undertakes to give prior notice" (line 270); "The Carriers agree that the Carriers" (line 239); "the Agent hereby submits to arbitration" (line 296);

c) Absence of devices usually used for emotive effect such as rhetorical questions, alternation between declarative, exclamative and interrogative sentences.

d) Use of passive voice and other impersonal constructions, such as [- human] complex noun phrases and post nominal modification of the subject, as described in *Medium* above, which favor an objective and precise presentation of the parties' rights and obligations.

Lexical means:

a) Use of expressions to delimit the range of possible interpretation.

E.g.: "the current edition" (line 48); "The Agent specifically acknowledges" (line 49); "it will not directly or indirectly procure" (line 101);

b) Use of vague expressions, in most cases to suit the interests of the Carrier.

E.g.: "other applicable TA Resolutions" (line 41); "or otherwise transferred" (line 262); "such rights and liability as may exist" (line 373); use of determiner *any* meaning "not important which" (Procter, 1995:52), in lines 312, 334, and 369;

c) Repetition of lexical items designed to restrict interpretation.

E.g.: "as are *authorised* in this Agreement" (line 95); "as *authorized* by the Carrier" (line 78); "as the Carrier may *authorize*" (line 85); "*with respect to*" (lines 106 and 371); "*such* transportation as published" (line 104); "*such* local standards" (line 39); "*such* amendments" (line 60);

d) Frequency of legal terminology (*Social Attitude*, Lexical means (d), above);

e) Absence of devices designed to make the text sound attractive or poetic, such as figurative language, alliteration, and lexical items marked [+ emotive];

f) Presence of phrases that explicitly state acceptable alternatives.

E.g.: "its officers or employees" (line 97); "to audit or procure an audit" (line 152); "no sooner than the last day of the month" (line 287).

g) Use of phrases connected to the main clause by the conjunction *or* in order to include various possibilities.

E.g.: "notices to be sent under this Agreement from the Carrier or from the Agency

Administrator to the Agent, or from the Agent to the Carrier or to the Agency Administrator" (line 338);

h) Use of expressions that aim at introducing hypotheses.

E.g.: "In the event of" (lines 161, 168, 201, etc.); "as may be necessary to" (line 115); "where the Carrier participates in" (lines 155 and 325); "if any" (lines 362 and 295);

i) Use of qualifying adverbs which aim at emphasizing the behavior expected from the party involved.

E.g.: "strictly" (line 102); "efficiently" (line 116); "orderly" (line 252);

Textual means:

The text is highly coherent due to the employment of devices such as logical clause subdivisions (*Social Attitude*, above), and the following mechanisms of theme dynamics, clausal and iconic linkage:

Theme dynamics:

a) Repetition of lexical items that function as key words expressing the contractual relationship between the parties.

E.g.: "Agreement" (lines 19, 34, 96, 122, etc.); "conditions" (lines 27, 88, 91, 103, etc.); "authorized" (lines 75, 84, 78, etc.); "remuneration" (lines 189, 199, 225, etc.); "notice" (lines 63, 271, 284, 338, etc.);

b) Use of *this* and *the* as deictics.

E.g.: "this Agreement" (lines 19, 63, etc.); "this Paragraph" (line 71); "the Resolutions" (line 29); "the SP Manual" (line 37);

c) Frequency of anaphoric referencing.

Examples: "such" (lines 16, 60, 216 etc.); "their" (line 22); "same" (line 20); "which" (lines 99, 125, 131, etc.);

d) Use of exophoric referencing.

E.g.: "other applicable TA Resolutions" (line 41); "other air carriers" (line 78);

e) Logical organization of the contents: effectiveness, other documents incorporated to the agreement, the parties' rights and obligations, miscellaneous legal matters relating to the agreement such as its assignment, termination applicable law, etc.;

f) Constant repetition of words and expressions which creates a semantic parallelism that favors the strong textual cohesion present in the ST.

E.g.: "where applicable" (lines 36, 241, and 248); "transportation or [and] ancillary services" (lines 183, 187, 198, and 220); "in accordance with" (lines 102, 163, 213, 271, etc.); "at any time" (lines 145, 152, 159, and 285).

Clausal linkage:

a) Use of the logical connector *then*.

E.g.: "then notwithstanding the normal" (line 205);

b) Ample use of additive and alternative relations by means of the conjunctions *and* and *or*, respectively.

E.g.: Many instances of *and* throughout clauses 2.1(b), 2.2, 9, etc., and *or*, in clauses 7.4, 15.1, 16, etc.

Iconic linkage:

a) Structural parallelism between the clauses "arising in the course of" (line 305), "arising from any negligent act" (line 317), and "resulting from the negligent or" (line 331);

b) Structural parallelism between three adverbial phrases: "as published from time to time" (line 31), "as amended from time to time" (line 42); "as may be stated from time to time" (line 223);

c) Structural parallelism between subordinate noun phrases: "in the event" (lines 68, 162, 168, 201, and 265); "where the Carrier" (lines 155 and 324);

Statement of Function

The function of the text consisting of an ideational and an interpersonal component may be summed up as follows: the addresser's intention seems to be to establish the rights and obligations of the contracting parties. Since it is part of the essence of contracts that such rights and obligations be clearly stated by the writer of the contract and properly understood by the contracting parties, the addresser makes sure to pass on factual information as precisely and efficiently as possible.

This feature operates in support of the ideational functional component which is strongly marked in all dimensions, and is therefore the dominant one in this text. The interpersonal component, while implicitly present, is rarely marked in the text.

The statement of function above derives from an examination of the individual dimensions, which operate in the following way:

In the dimension *Medium*, the *written to be read* mode operates in support of the ideational functional component. It facilitates a well-organized, logical and premeditated information flow which is not interrupted since there is no direct presence of the addressees.

Similarly, in the dimension *Participation*, the lack of addressee participation supports the ideational component as the message is organized in a linear, non-alternating manner. One instance of addressee-involving structure is found in the contract, and though it occupies a very unimportant position in relation to the whole text and can even pass unnoticed, the imperative structure found at the end of the contract does support the interpersonal component.

In *Social Role Relationship*, the impersonality which characterizes the relationship between the writer and the general readers operates in support of the ideational functional component for it demonstrates that an efficient passing on of factual information is given priority. However, the same linguistic devices that are used to create impersonality are used to express the asymmetrical relationship existing between the writer of the contract and the contracting parties, and the relationship among these parties. The use of impersonal constructions, as well as the use of devices that confer many sentences an illocutionary force of order, clearly support the interpersonal component of the text's function.

In *Social Attitude*, the formality that is marked by the syntactic and lexical devices that give the text a very impersonal tone and the use of well-structured sentences

facilitate a condensed and objective information flow, which supports the ideational functional component. However, these devices end up operating in support of the interpersonal functional component due to the intimidating tone conveyed by the impersonal structures used.

The dimension *Province* also operates in support of the ideational functional component through the use of legal terminology, the predominance of denotative words, the well-organized structures, the textual cohesion and the graphical means utilized. The text indicates there is no attempt on the addresser's part to make the text attractive or interesting to the addressees. The writer's intention seems to be to impart information efficiently, not to make the contract easy to understand or more palatable to the addressees. The interpersonal functional component is marked to a minor degree in that it seems the addresser is careful enough to make sure information is presented in an unambiguous, logical and cohesive manner. Also, the consistent use of a modal verb to express obligation seems to emphasize to the addressees one of the main features of this type of text, i.e., it is a text that expresses obligations that must be fulfilled by both parties.

3.3.2 Analysis of Translation Text no. 2.1

COVERTLY ERRONEOUS ERRORS

The comparison of the ST and the TT indicates mismatches in the following dimensions:

DIMENSIONS OF LANGUAGE USE:

MEDIUM

Syntactic means:

a) The subordination in "with regard to any transportation ... under appointment" (line 97) is not present in the TT. The lack of the subordinate clause alters the meaning of the whole clause, and leaves out one feature of the text's *written to be read* mode.

b) Use of an agent in an instance of an agentless passive construction: "a Traffic Document shall be issued immediately money is received by the Agent" (line 181) translated as "um Documento de Tráfego deverá ser emitido pelo Agente imediatamente após o recebimento de pagamento" (line 200).

This change of position of the Agent cannot be considered a mismatch because the text suggests that it is the Agent that receives the payment who is going to issue the Traffic Document. Besides, it is clear in Clause 3.1 that the Agent is authorized to issue a Traffic Document and collect the corresponding amounts.

c) Reduction of long appositional phrases.

E.g.: omission of a translation for "thereunder" (line 189) in clause 7.2; translation of "the Settlement Plan Management" (lines 240 and 247) as "seus auditores" (line 264) and "os auditores" (line 269), respectively;

d) Two instances of prepositional verbs are dealt with in different ways. With the literal translation of "acting for and on behalf of" (line 11) the preposition is maintained, which results in an awkward phrase in Portuguese, not used in Brazilian contracts: "agindo por e em nome de" (line 12).

On the other hand, to avoid the use of the preposition in Portuguese, the Translator gives a free rendering to the phrase "caused or contributed to by the Agent" (line 322),

which becomes "causados, na sua totalidade ou em parte, pelo Agente" (line 352). This change cannot be considered a mismatch since the original meaning is maintained, because to contribute to something means to be partially responsible for its occurrence.

e) [- formal] rendering for [+ formal] structure with "upon" (lines 16 and 19).

E.g.: "através da indicação do Agente" (line 20); "Uma vez concretizado, este contrato" (line 23). Suggested alternative: "quando da";

f) Omission of a translation for *prior* to the detriment of the complex noun phrase "prior Passenger Sales Agency Agreements" (line 369);

g) Non-prepositional use of an adverbial syntagm, a structure which seems to be typical of the written mode of a language.

E.g.: "for the sale of air transportation and ancillary services by the Agent under this Agreement the Carrier shall remunerate" (line 220), translated as "a venda de transporte aéreo e de serviços afins pelo Agente deverá ser remunerada pelo Transportador" (line 241);

Lexical means:

a) Omission of some [+ archaic] derivatives from the adverbs *here* and *there*, a fact which makes the TT less unambiguously clear than the ST.

E.g.: "hereunder" (lines 200 and 308); "hereby" (line 296); "thereunder" (lines 190 and 299);

In some instances, a [- formal] expression than the one in the ST is used.

E.g.: "herein" (line 22), translated as "aqui" (line 26); "hereinafter" (lines 7 and 9), translated as "que neste contrato" (line 7) and "neste contrato" (line 10); "hereto" (line 23), translated as "deste" (line 27);

b) Some ready-made strings are not maintained as such in the TT, and receive different translations.

E.g.: "including but not limited to" (lines 51 and 81) is translated as "que inclui este e outros assuntos" (line 57) and as "que incluía, entre outros," (line 90); and "by notice in writing" (lines 63 and 285), translated as "aviso por escrito" (line 70) and "notificação por escrito" (line 312).

Some other ready-made strings are not translated by their most commonly used counterparts in Brazilian contracts. E.g.: "unless the context otherwise requires" (line 66), translated as "a menos que o contexto assim o torne necessário" (line 73), instead of *salvo se o contexto exigir de forma diversa*; "without prejudice to" (lines 290 and 372), translated as "sem o prejuízo das" (line 317) and "sem o prejuízo de" (line 407), with the insertion of the definite article, not usually included in the Portuguese version of this ready-made string; "in whole or in part" (line 263), translated as "na sua totalidade ou em parte" (line 286), instead of *no todo ou em parte*; "except to the extent required by law" (line 243 and 258)", translated as "até onde a Lei os permitirem" (line 264) and "até onde a Lei o permitir" (line 279), instead of *exceto conforme exigido em lei*;

Textual means:

a) Omission of the temporal deictic "immediately" (line 164) and inadequate translation of the local deictic in "its office" (line 132) as "este escritório" (line 145), in

prejudice of the characterization of the text as a predominantly etic text.

SOCIAL ROLE RELATIONSHIP

Syntactic means:

a) Use of verb *poder* as a translation for modal auxiliary verb *shall*. In using this verb, the sentence in the TT does not convey the same illocutionary force of order found in its corresponding sentence in the ST. In addition, this fact causes the Portuguese version of the contract to have fewer references to the Agent's obligation than the ST.

E.g.: "poderá restituir" (line 236).

SOCIAL ATTITUDE

Syntactic means:

a) Reduction of the complexity of the noun phrase "prior Passenger Sales Agency Agreement" (lines 369) with the omission of the word "prior" (line 404);

Lexical means:

a) Use of a [- formal] lexical item or expression in substitution for a [+ formal] counterpart in English.

E.g.: "notwithstanding" (lines 206 and 245) translated as "apesar" (lines 227 and 267), instead of *não obstante*; "this 15th day of December 1993" (line 3) translated as "em 15 de dezembro de 1993" (line 3), instead of *aos 15 dias de dezembro de 1993*;

b) Non-use of a slightly formal lexical item (Procter, 1995:951)

E.g.: omission of "nevertheless" (line 365);

c) Lack of counterparts for some legal terms or expressions which are translated for

[- legal] terms.

E.g.: "without prejudice" (lines 290 and 372) translated as "sem o prejuízo" (lines 317 and 407), instead of *sem prejuízo*; "notice" (lines 284 and 338) translated as "aviso" (lines 311 and 370), instead of *notificação*; "arbitration award" (line 299) translated as "decisão" (line 327), instead of *decisão ou sentença arbitral*; "whereby it is agreed as follows" (line 12) translated as "onde fica acordado que" (line 15), instead of *fica por meio deste acordado o que segue* or an equivalent [+ legal] form; "terminates" (line 63) translated as "cancele" (line 69), instead of *rescinda*; "rights and liability" (line 373) translated as "direitos e reponsabilidade" (line 408), instead of *direitos e obrigações*; "Paragraph" and "Subparagraph" (line 71) translated as "parágrafo" (line 78) and "subparágrafo" (line 77), instead of the commonly used terms *cláusula* and *item*; "pursuant to" (lines 307, 141 and 295) translated as "conforme" (lines 337, 156, and 324, respectively), instead of *de acordo com* or *de conformidade com*;

d) Omission of some [+ formal] words.

E.g.: derivatives from *here* and *there* (*Medium*, above).

Textual means:

a) Use of several commas in very long sentences which present few or no punctuation marks in the ST (lines 64-71 and 171-178). Only one comma was inserted in one instance of a long sentence (lines 200-206). This insertion of commas cannot be

considered a mismatch because it is done to have the text conform to the structure of the Portuguese language.

PROVINCE

Graphical means:

a) Non-capitalization of lexical items which are capitalized in the ST for emphasis.

E.g.: "contrato" (lines 19, 70, 156, etc.); "leis de Agenciamento de Vendas" (line 324); "plano de compensação de pagamentos" (line 41);

b) Boldface type is used differently in the ST and in the TT. Lines 3, 15, 420 and 436 are in bold in the TT, but not their counterparts in the ST. On the other hand, line 391 is in bold in the ST, but not in the TT (line 430).

Syntactic means:

a) Inconsistent translation of the modal auxiliary verb *shall*: some sentences take the future form while some others make use of the future form of the verbs *dever* or *poder*.

E.g.: "tornar-se-á válido" (line 19); "terá a mesma força" (line 24); "deverá fornecer" (line 63); "deverá ser notificado" (line 65); "não poderá intitular-se" (line 142); "poderá restituir" (line 236).

This inconsistent translation for *shall* creates problems. For instance, the TT lacks one strong element of textual cohesion in contracts, that is the use of one tense throughout almost the entire contract.

Besides, with the use of *deverá*, one may be led to think that obligations are only expressed by means of this verb, and that the sentences that take a verb in the future tense do not express obligation.

b) Use of a future form instead of the original present tense to express one instance of obligation: "the Agent hereby submits to arbitration" (line 296) is translated as "o Agente submeter-se-á ao arbitrio" (line 325).

This sentence implies that the Agent is not submitting to arbitration when signing that particular contract, but that the Agent will do that later on. However, had the translator not omitted a translation for the term *hereby*, s/he would have perceived that when signing the contract the Agent submits to any possible arbitration.

A similar example is provided by the use of the future tense in the translation of "undertakes to give prior notice" (line 270) as "deverá comprometer-se a notificar" (line 293).

Lexical means:

a) Non-use of a vague term among others that seem to suit the interests of the Carrier: the term *otherwise* in "or otherwise transferred" (line 262) is omitted from the TT;

b) Use of different renderings for lexical items designed to restrict interpretation which are repeated in the ST.

E.g.: "with respect to" (lines 106 and 371) is translated as "com relação" (line 109) and "no que se refere" (line 406), respectively; "of such transportation" (line 104) is translated as "do mesmo" (line 115); in "such local standards" (line 39) the determiner

such is omitted from the TT; "such amendments" (line 60) is translated as "estas emendas" (line 67);

c) Non-use of counterparts for legal terms in Portuguese, in jeopardy of the characterization of the text as a legal text (*Social Attitude*, above);

d) Translation of expressions that aim at introducing hypotheses for expressions that state certainty.

E.g.: "as may be necessary to" (line 115) translated as "sempre que assim for necessário" (line 125); "where the Carrier participates in" (lines 155 and 325) translated as "nos locais onde o Transportador participa" (line 171) and "nos locais onde o Transportador participar" (line 355);

e) Omission of qualifying adverbs.

E.g.: "strictly" (line 102); "orderly" (line 252);

f) Omission of several items causing the text to be less precise or emphatic than the ST.

E.g.: "any" (lines 59 and 68); "each" (lines 114 and 116); "Approved" (line 123); "as the case may be" (line 139); "at all times" (line 144); "other" (line 157); "for the Carrier" (line 191); "as appropriate" (line 343); "becomes subject to" (lines 201 and 204); "adequate" (line 229); and "such ancillary" (line 84);

g) Insertion of some lexical items designed to make the text precise. These insertions were necessary due to the way the surrounding words were translated.

E.g.: "estas mudanças" (line 293); "enviado" (line 382); and "nestes casos" (line 392).

h) Unnecessary insertion of some lexical items which do not add to TT's comprehension since the ST is clear enough.

E.g.: "do Agente de Viagens" (line 55); "referido" (line 57); "que vierem a ser" (line 66); "enviado" (line 70); "em poder do Agente" (line 154); "já referido" (line 181); "os termos deste" (line 203); "entre as partes" (line 214);

Textual means:

Theme dynamics:

a) Use of different lexical items in the translation of terms that are repeated in the ST and that function as key words expressing the contractual relationship between the parties.

E.g.: "notice" translated as "aviso" (lines 70, 311, etc.) and "notificação" (lines 312, 316, etc.); "Agreement" translated as "contrato" (lines 65, 72, etc.) and "acordo" (line 79);

b) Lack of anaphoric referencing.

E.g.: omission of "such" (lines 16 and 39) and "their" (line 22);

Clausal linkage:

a) Omission of the logical connector *then* in "then notwithstanding the normal" (line 205);

Iconic linkage:

a) Structural parallelism between the clauses "arising in the course of" (line 305), "arising from any negligent act" (line 317), and "resulting from the negligent or" (line

331), is broken in one instance. These phrases are respectively translated as "ocorridos no decorrer do" (line 336), "causados por negligência" (line 348), and "que resultem de" (line 362);

b) Structural parallelism between three adverbial phrases is broken in one instance in the TT: "as published from time to time" (line 31), "as amended from time to time" (line 42); and "as may be stated from time to time" (line 223) are respectively translated as "que é regularmente publicado" (line 36), "que venham a ser anexados" (line 49), and "que regularmente comunicará" (line 243);

c) Structural parallelism between subordinate noun phrase "in the event" (lines 68, 162, 168, 201, and 265) is broken in some instances, as it is translated as "Em caso de" (line 75), "No caso de" (lines 178, 222 and 288) and "nos casos onde" (line 184) ;

OVERTLY ERRONEOUS ERRORS

1. The TT presents several instances of breach of the target language system:

1.1) *Cases of ungrammaticality:*

a) Unjustified use of "no" (line 6) before the address of one of the parties, since the most probable forms following that contracted form are *rua*, *avenida* or an equivalent female word;

b) Incorrect use of pronoun *se* after a verb preceded by relative pronoun *que*, instead of before the verb.

E.g.: "que encontram-se" (line 35); "que encontrem-se" (line 226);

c) Inadequate choice of preposition in "participa com" (line 171), instead of

participa de;

d) Inadequate choice of pronoun *onde* in "nos casos onde" (line 184), instead of *nos casos em que;*

e) Inadequate use of contracted form "do" (line 184) as a translation for a preposition + indefinite article form in "of an" (line 168), instead of *de um;*

f) Lack of subject-verb agreement.

E.g.: "terceiros, que não seja" (line 185); "qualquer *parte* do sistema automatizado de bilhetes seja fornecido" (line 184); "os *termos e condições* que regem o relacionamento entre o Transportador e o Agente estão descritas" (line 32); "todos os *pagamentos ... e devem ser recebidas*" (line 207);

g) Wrong verb forms.

E.g.: "que devam, de acordo com este contrato, serem" (line 370); instead of *que devam ... ser;* "deverão ser incorporados a este contrato e neste constarem" (line 51), instead of *constar;* "até onde a Lei os permitirem" (line 264), instead of *o permitir;* "renuncia" (line 308), instead of *renunciar;* use of present form "indicam" (line 11) with the wrong insertion of "aqui" (line 10), instead of the subjunctive form of the verb;

h) Wrong choice of pronouns.

E.g.: "os" (line 273), instead of *lhes;* "neste" (line 191), instead of *nele;* "estas" (line 293), instead of *tais;*

i) Lack of agreement in gender.

E.g.: "alteração do situação" (line 282); and "uma sistema" (line 355);

j) Lack of capitalization of the initial letters of the words starting the clauses, in spite of the (incorrect) non-capitalization of these word in the ST;

k) Omission of preposition *a* in "venha afetar" (line 224);

l) Omission of the noun "Agent" (line 217) resulting in the inadequate form "pelo próprio" (line 236), in which a pronoun or a noun is missing;

m) Wrong insertion of pronoun "o" (line 73), which would refer to a direct object in a sentence that has no direct object;

1.2) *Cases of dubious acceptability:*

a) Insertion of "alegando" (line 188) which does not seem to collocate with "confirmação" (line 187);

b) Translation of "contractors" (line 333) and "independent contractors" (line 334) as "empreiteiros" (line 364) and "empreiteiros independentes" (line 365), respectively.

Although those words may be translated as such in other contexts, *empreiteiros* is a term commonly used to refer to those who intermediate construction work. Suggested alternative: "prestadores de serviços" and "prestadores de serviços autônomos";

c) Use of gerund in clause titles.

E.g.: "Vendendo serviços ao Transportador" (line 82); "Substituindo outros Contratos" (line 402);

d) Translation of the term "relationship" (line 28), as "relacionamento" (line 32), a

term which is not commonly found in Brazilian contracts, instead of *relações*;

e) Modification of the structure of the "Note" (line 391), creating an awkward sentence: "Quando a Lei local assim fizer necessário" (line 430), as if the law could cause an action to be necessary, instead of obligatory;

f) Constant use of pronouns that would normally be omitted in Portuguese, for the sake of style.

E.g.: "estas" (line 107); "ele" (line 159); "este" (lines 180 and 292);

g) Constant repetition of nouns that can be replaced by pronouns. This repetition is commonly avoided in Portuguese for the sake of style, because it makes the text sound awkward, as if it were written by an uneducated writer.

E.g.: "o Transportador concorda que o Transportador" (line 262), "fazer uma auditoria ou requerer uma auditoria" (line 167);

h) Inadequate placement of the word *específico* in "transporte aéreo de passageiro específico" (line 202), making the reader wonder who this specific passenger might be, instead of *transporte aéreo ou serviços afins específicos*;

2. Various cases of mismatches of denotative meaning can be reported:

2.1) *Wrong selections*:

a) Inadequate translation of some lexical items, in the context where they appear.

E.g.: "accounts" (line 229) as "livros contábeis" (line 250), instead of *contas*; "injury" (lines 304, 310, 316, 322, and 330) translated as "injúrias" (lines 334, 341, 346,

352, and 361) instead of *danos pessoais*; "Rules" (lines 17, 25, and 42) translated as "Leis" (lines 21, 29, and 49), instead of *Normas ou Regras*; "otherwise" (line 66) translated as "assim" (line 73), instead of *de forma diversa*; "procure" (line 98) translated as "buscar" (line 110), instead of *adquirir, obter*; "a transaction under this Agreement" (line 141) translated as "a transação contida neste contrato" (line 156), instead of *uma operação realizada de acordo com este Contrato*; "sole property" (lines 139 and 143) translated as "únicos bens" (lines 154 and 158), instead of *propriedade exclusiva*; "arbitration" (line 297) translated as "arbitrio" (line 325), instead of *arbitragem*; "from time to time" (line 348) translated as "eventualmente" (line 381), instead of *periodicamente*; "receipt" (line 342) translated as "recibo" (line 375), instead of *recebimento*; "In witness whereof" (line 376) translated as "Com a presença das testemunhas" (line 411), instead of *Em testemunho do que* or *E por estarem assim contratadas*, as used in Brazilian contracts; "typed or printed" (lines 385 and 397) translated as "datilografado ou impresso" (lines 422 and 437), instead of *datilografado ou em letra de forma*; "full compensation" (line 225) translated as "uma compensação" (line 245), instead of *compensação integral*; "must be held" (line 191) translated as "devem ser recebidas" (line 211), instead of *serão retidos*; "supporting documents" (line 230) translated as "documentação adequada" (line 251), instead of *documentação comprobatória*; "Agency Services" (line 382) translated as "Agência - Serviços" (line 419), instead of *Serviços de Agenciamento*; "declared in default" (line 162) translated as "ser declarado negligente" (line 178), instead of *ser declarado inadimplente*; "under Subparagraph 2.1" (line 71) translated as "contidos no sub-parágrafo 2.1" (line 77), instead of *de acordo com o Item 2.1*; "provided for under the Sales Agency Rules" (line 40) translated as "descritas nas Leis de Agenciamento de Vendas" (line 44), instead of *estipulados de acordo com* or *estabelecidos de acordo com*;

b) Inadequate translation of derivatives from *here* and *there*, creating nonsensical phrases.

E.g.: "hereof" (lines 45 and 374) translated as "a partir de então" (line 51) and "a partir desta data" (line 408), instead of *do presente Contrato*.

In the first situation there is no reference to time whatsoever in the ST, and in the second, the date mentioned is the date written in the beginning of the contract, that is, December 15, 1993, and not any future date.

It seems these derivatives are once again mistakenly translated in the translations of "amendments thereto" (line 20) and "therein provided" (line 298). In the first case, "emendas neste incluídas" (line 24) implies that the amendments are already part of the text of the Contract. In the second example, "aqui descritos" (line 326) affirms that the procedures are described in the Contract, but in fact they are described in the Sales Agency Rules, as the entire clause suggests.

A similar example is provided by the translation of "the parties hereto" (line 371) as "as partes daqui por diante" (line 405), instead of *as partes do presente Contrato*.

c) Inadequate translation of the noun *particulars*, in "specific requests or particulars in connection with each customer" (line 114) as an adjective in "pedidos específicos ou particulares dos clientes" (line 125), altering the whole sentence. Suggested alternative: "solicitações ou detalhes específicos relativos a cada cliente".

2.2) Omissions:

a) Omission of "are deemed to be" (line 43). This omission leads to a sentence in the TT that reads "deverão ser incorporados a este contrato" (line 50), instead of *são*

considerados incorporados a este Contrato. Thus, the sentence in the TT implies that the incorporation will be a future action that will consequently depend on other instruments. However, it seems clear in the ST that incorporation is contemporaneous with the signature of the contract, and does not depend on any other instrument.

A similar omission is made in "deverão ser [consideradas] incorporadas a este" (line 67);

b) Omission of "and the Agent agrees to return them" (line 149). With the omission of this whole phrase the TT lacks one obligation the Agent undertakes to fulfill when it signs the contract;

c) With the omission of the term "default" (line 166), the TT implies that the Agent shall cease issuing neutral Traffic Documents only in the event that the Agent is suspended, and not if it is declared in default, as stated in the ST;

d) Important references to other documents and to the contract itself are lost in the TT with the omission of translations for "thereunder" (lines 190 and 299), "hereby" (line 296), and "hereunder" (lines 200 and 307);

e) Omission of the contents of lines 385-389, and 397-399. It seems possible that these omissions result from the fact that as the translator knew what purpose his translation would serve, s/he did not consider such phrases to be important and thus omitted them.

f) Omission of an expression that states a hypothesis: "as may be" (line 39).

2.3) *Insertions:*

a) Insertion of "desde que o já referido" (line 112) causing the whole subparagraph

to have a different meaning from that in the ST. According to the TT, the Agent's action of committing itself not to procure on the services of another air carrier is a future action, whereas in the ST the Agent's commitment begins the moment the Agent signs the contract.

It seems that this complete change in meaning originated from the failure of the translator to notice that there is the omission of the pronoun *that* in "with regard to any transportation [that] the Agent" (line 97) in the beginning of the subparagraph, an omission that is possible in English, but not in Portuguese.

b) Insertion of the noun "pagamento" (line 58), delimiting the scope of the word "indenizações" (line 59);

c) Insertion of "de dinheiro" (line 61), giving the TT some specificity that is not present in the ST. For instance, the text may refer to the remittance of documents.

A similar example is provided by the insertion of "por este" (line 99). For instance, the documents mentioned in that subparagraph may have been provided by the Transport Association;

d) Insertion of "da maneira como estes são oferecidos" (line 85), establishing a condition that is not present in the ST.

e) Insertion of "que estiverem" (line 121) creating a nonsensical subparagraph, because if the Traffic Documents are already issued in accordance with the Carrier's instructions they do not need to be issued, accepted, reissued, validated or revalidated. It seems clear that the subparagraph is referring to Traffic documents which have been issued prior to the contract and not in accordance with the Carrier's instructions.

Statement of Quality

Numerous mismatches were found when comparing ST.2 and TT 2.1 along the situational dimensions:

In the dimension *Medium*, some devices used in the ST that help characterize the *written to be read* mode of the language are not present in the TT, as demonstrated in the analysis of the syntactic means utilized. In addition, the omission of some [+ archaic] derivatives from the adverbs *here* and *there* exclude from the TT some lexical items that are commonly used in written text. These deficiencies jeopardize the ideational functional component in that information is not passed on as efficiently as in the ST. To a minor extent, the interpersonal functional component is also violated because the writer's intention to create a text with features belonging to the written mode of the language seems not to be considered by the translator.

In *Social Role Relationship*, the interpersonal functional component is weakened by the non-utilization of counterparts for legal terms in Portuguese, and TT's comprehension seems to have been facilitated to the addressees of the TT.

In addition, the use of the verb *poder* as a translation for *shall* clearly violates both functional components in that the idea of obligation is not clearly conveyed in the TT as it is in the ST, and the asymmetry that characterizes the relationship between the writer of the contract and the contracting parties is less marked in the TT.

The ideational component of the text's function is clearly weakened by the mismatches in *Social Attitude*, for they render the TT [- formal] than the ST. The interpersonal functional component is also impaired for the TT does not fully realize the

intention of the addresser to make an impersonal and formal text. Besides, as it loses formality, the TT also loses part of its intimidating effect.

In the dimension *Province*, the TT compromises the ideational functional component in that the mismatches found clearly prevent information from being imparted as efficiently and precisely as in the ST. For instance, the TT lacks adequate translations for the verb forms expressing contractual obligation and lacks appropriate counterparts in Portuguese for some legal terms. These mismatches also alter the interpersonal functional component in that the emotional impact caused by the means utilized in the ST to emphasize the obligation which joins both contracting parties is weakened by the non-utilization of those means in the TT.

The numerous *overtly erroneous errors* found in the TT do prevent information from being conveyed in an efficient and precise manner, and the reader is frequently forced to reread parts of the contract to grasp the ideas hidden by the errors. In addition, these errors are detrimental to the interpersonal functional component since they violate the writer's intention to make a clear and precise text, in which each party understands quite clearly the obligations that are put to it.

To sum up, in many instances the TT impairs both functional components in four situational dimensions, and the numerous *overtly erroneous errors* found in the TT are responsible for violating those components.

3.3.3. Analysis of Translation Text no. 2.2

COVERTLY ERRONEOUS ERRORS

The analysis of the TT reveals that it presents mismatches in the following

situational dimensions:

DIMENSIONS OF LANGUAGE USE:

MEDIUM

Syntactic means:

a) [- formal] rendering for [+ formal] structure with "upon" (lines 16 and 19).

E.g.: "após a nomeação do Agente" (line 11). Suggested alternative: "quando da";

b) Non-prepositional use of an adverbial syntagm which seems to be typical of the written mode of a language, due to the predicate-subject inversion.

E.g.: "for the sale of air transportation and ancillary services by the Agent under this Agreement the Carrier shall remunerate" (line 220), translated as "A Transportadora remunerará o Agente pela venda de transporte aéreo e serviços correlatos efetuada pelo mesmo" (line 202);

c) Modification of the position of the adjective *prior* in the noun phrase "prior Passenger Sales Agency Agreements" (line 369), with the reduction of complexity of such noun phrase: "Contratos de Agenciamento de Vendas a Passageiros anteriormente existentes" (line 345).

A more literal translation, such as *Contratos anteriores de Agenciamento de Vendas a Passageiros*, would have maintained the complexity of the original noun phrase, and would also have avoided the ambiguity present in *a Passageiros anteriormente existentes*.

Another complex noun phrase is not maintained as such, and there is the insertion of commas that put in apposition a phrase which does not seem to make sense in apposition: "No caso de a Transportadora participar de um sistema automatizado de emissão de bilhetes, para a elaboração de Documentos de Tráfego neutros," (line 304).

d) Translation of two instances of prepositional verbs, with the omission of the corresponding prepositions.

E.g.: "acting for" (line 11), translated as "agindo em nome" (line 7); "caused or contributed to" (line 311), translated as "causados ou agravados" (line 290).

In these two cases, however, there seems to be no mismatch, since the original meaning is maintained.

Lexical means:

a) Omission of one [+ archaic] derivative from the adverb there, a fact which makes the TT less unambiguously clear than the ST.

E.g.: "thereunder" (line 299); "hereby" (line 296);

b) Different translations for one ready-made string which is not maintained as such in the TT.

E.g.: "including but not limited to" (lines 51 and 81), translated as "inclusive, mas sem a isso limitar-se" (line 41) and as "inclusive, porém sem a isso limitar-se" (line 69).

Another ready-made string is not translated as such: "in whole or in part" (line 263) receives the unnecessary insertion of *seu* in "no seu todo ou em parte" (line 244).

Textual means:

a) Omission of the local reference "U.S.A." (line 382), in prejudice of the characterization of the text as a predominantly etic text.

PARTICIPATION

Omission of the only phrase in the ST in which the Agent's participation is elicited:
"If address is incorrect please indicate below" (line 389).

SOCIAL ATTITUDE

Lexical means:

a) Use of a [- formal] lexical item or expression in substitution for a [+ formal] counterpart in English.

E.g.: "ascertain" (line 154) translated as "verificar" (line 140), instead of *certificar-se*; "relinquishes" (line 282) translated as "desistir" (line 263), instead of *renunciar*;

b) Non-use of a slightly formal lexical item.

E.g.: omission of "nevertheless" (line 365);

c) Lack of counterparts for some legal terms or expressions which are translated for [- legal] terms.

E.g.: "set forth" (lines 37, 91 and 271) respectively translated as "dispostas" (line 29), "escritos" (line 79) and "detalhados" (line 254), instead of *expostos* or *estabelecidos*; "notice" (lines 285 and 288) translated as "aviso" (lines 53, 253, 267, 270, etc.), instead of *notificação*; "Paragraph" and "Subparagraph" (line 71) translated as "Parágrafo" and

"Subparágrafo" (line 60), instead of the commonly used terms *cláusula* and *item*;

d) Omission of a [+ formal] derivative from *there* (Medium, above).

Textual means:

a) Use of several commas in very long sentences which present few or no punctuation marks in the ST (lines 48-53, 142-149 and 167-173). The insertion of commas in the lines mentioned above cannot be considered a mismatch because it is done to conform the text with the structure of the Portuguese language.

PROVINCE

Graphical means:

a) Although boldface type is used differently in the ST and in the TT in that the numbers of items in the clauses are not in bold in the ST, it seems it is adequately used in the TT. Differently from the TT, in the ST there is a blank line separating its clauses which makes it easy to identify the clauses and items. As there is no such blank line in the TT, the use of boldface type in the numbers of items helps the identification of clauses and items.

Syntactic means:

a) Inconsistent translation of the modal auxiliary verb *shall*, in prejudice of the strong textual cohesion existent in the contract: while most sentences take the future form, in one instance the auxiliary *dever* is used.

E.g.: "such notice shall include" (line 289) is translated as "esse aviso deverá incluir" (line 270);

b) Use of a future form instead of the original present tense to express obligation.

E.g.: "the Agent hereby submits to arbitration" (line 296), translated as "o Agente se submeterá à arbitragem" (line 276); and "the Agent undertakes to give prior notice" (line 270), translated as "o Agente dará aviso prévio" (line 252).

Lexical means:

a) Non-use of an expression that confers some vagueness to a sentence.

E.g.: "as may exist" (line 373) is translated as "existentes" (line 349);

b) Different translations for one lexical item repeated in the ST to restrict interpretation.

E.g.: "such" (lines 39, 60 and 104) is omitted from clause 2.1, (a), (iii), and is translated as "essas" (line 49) and "desse" (line 91);

c) Use of [- legal] terms in Portuguese, in jeopardy of the characterization of the text as a legal text (*Social Attitude*, above);

d) Translation of expressions that state hypotheses as expressions that state certainty.

E.g.: "as may be necessary" (line 115) translated as "necessários" (line 102); "as may be provided" (line 39) translated as "estipulados" (line 30);

e) Omission of several items causing the text to be less precise than the ST.

E.g.: "called" (lines 7 and 9); "as parties" (line 23); "on the services" (line 77); "have the effect of" (line 363); "nevertheless" (line 365); "as may" (line 373); "other" (lines

264). This last omission cannot be considered a mismatch, since it seems the use of "outra" (in line 245) would have made the text sound redundant.

f) Insertion of some lexical items. It seems these insertions cannot be considered mismatches for they make the Portuguese text more precise.

E.g.: "onde haja" (line 14); "sua divulgação" (line 224); "sua" (line 247); "seu" (line 248).

In some other instances, insertions are necessary due to the way the surrounding words were translated, or to avoid redundant expressions in very close position.

E.g.: insertion of "onde esteja" (line 331), due to the translation of "place" (line 353) as "foro" (line 331); insertion of "passam a ser" (line 35) to avoid "incorporadas a este Contrato e parte integrante do presente" (line 35).

Textual means:

Theme dynamics:

a) Use of different lexical items for terms that are repeated in the ST, and that function as key words expressing the contractual relationship between the parties.

E.g.: "notice", translated as "aviso" (lines 53, 253, 317, etc.) and "notificação" (lines 265 and 268);

b) Different translations for an anaphoric term.

E.g.: "such" (lines 60 and 216), translated as "essas" (line 49) and "mesmo" (line 201);

Iconic linkage:

a) Structural parallelism between the clauses "arising in the course of" (line 305), "arising from any negligent act" (line 317), and "resulting from the negligent or" (line 331), is broken. These phrases are respectively translated as "ocorridos durante" (line 284), "oriundos de qualquer" (line 296), and "resultantes de uso" (line 311);

b) Structural parallelism between three adverbial phrases is broken in one instance in the TT: "as published from time to time" (line 31), "as amended from time to time" (line 42), and "as may be stated from time to time" (line 223) are respectively translated as "periodicamente publicado" (line 25), "conforme alteradas de tempos em tempos" (line 34), and "declarados de tempos em tempos" (line 205);

c) Structural parallelism between subordinate noun phrase "in the event" (lines 68, 162, 168, 201, and 265) is broken in some instances, as it is translated as "Na eventualidade de" (lines 57 and 149), "Se" (line 156), and "caso" (lines 189 and 246);

OVERTLY ERRONEOUS ERRORS

1. The TT presents several instances of breach of the target language system:

1.1) *Cases of ungrammaticality:*

a) Lack of singular-plural agreement.

E.g.: "as tarifa" (line 90); "Placas de Identificação depositadas com o Agente serão sempre propriedade exclusiva" (line 128); "operações realizada" (line 212); "as atividades de *qualquer* das suas Instalações" (line 252); "Todos os avisos ... *será* aviso suficiente se enviado" (line 317);

b) Inadequate insertion of indefinite article.

E.g.: "ser declarada uma inadimplência" (line 150);

1.2) *Cases of dubious acceptability:*

a) Use of the future tense of *ir* in "O Agente não irá, de modo algum, alterar ou modificar" (line 78), instead of the simple future. Although both forms refer to an action in the future, the use of the auxiliary verb *ir* with an infinitive form as in "irá alterar ou modificar" refers to an action that is about to occur, which may not be the case in a contract (Camara Jr., 1992:61).

b) Use of the term "confidencialidade"(line 218), which cannot be found in dictionaries.

c) Constant repetition of nouns that can be replaced by pronouns, for the sake of style.

E.g.: "relativos a cada cliente, necessários para que a Transportadora possa atender a cada cliente" (line 101); "em nome da Transportadora, a Transportadora" (line 146); "do Agente ou o Agente ser suspenso" (line 150);

2. Various cases of mismatches of denotative meaning can be verified:

2.1) *Wrong selections:*

a) Inadequate translation of some lexical items.

E.g.: "pursuant to" (line 307) as "em seguimento a" (line 286), instead of *de conformidade com* or a similar expression; .

b) Inadequate placement of the expression "pelo Presente" (line 277). In "the Agent

hereby submits ... and agrees" (line 296), the adverb *hereby* applies to both *submits and agrees*, while in the TT it applies only to *agrees*: "o Agente se submeterá à arbitragem ... e pelo presente consente" (line 276);

c) Inadequate translation of derivatives from *here* and *there*.

E.g.: "therein" (line 298) translated as "pela arbitragem" (line 278), in an instance in which a reference is being made to the Sales Agency Rules; "thereunder" (line 190) translated as "de acordo com os mesmos" (line 177), instead of *pelos mesmos*, in "which the Agent is entitled to claim thereunder" (line 189).

2.2) Omissions:

a) Omission of the contents of lines 385-87, 389, and 396-99, maybe due to the fact that the translator knew the translation would be used for academic purposes only ;

b) Omission of an expression that indicates a hypothesis: "as may be" (lines 39 and 115).

c) Omission of the phrase "Director, Agency Services Area 1" (line 356);

2.3) Insertions:

a) Inadequate insertion of "Pelo" (line 353).

Statement of Quality

Though a first reading of the text suggests that TT 2.2 is an accurate translation of ST.2, a careful comparison of the ST and the TT indicates that the TT presents several mismatches in four of the situational dimensions, as well as several *overtly erroneous errors*.

In *Medium*, some structures that characterize the *written to be read* mode of the

language are either not present in the TT or are given [- formal] renderings. Therefore, the ideational functional component is compromised in this dimension. The interpersonal functional component is also violated for the writer's intention to create a text displaying features of a written text is not preserved by the TT, which lacks some of those features.

In the dimension *Participation*, the TT lacks the only instance of elicited addressee participation present in the ST. Such omission interferes with both functional components: the ideational component, in that some important piece of information concerning what to do in case the party's address is not correct, is omitted from the TT. The interpersonal component is also affected by this omission for it excludes from the TT the only instance in which the addressee is invited to participate, and therefore the only instance in which the interpersonal functional component is marked in the ST.

In *Social Attitude*, the absence of some [+ formal] terms and the translation of [+ legal] terms for [- legal] terms weaken the ideational functional component. These mismatches also violate the interpersonal functional component for they make the TT lose formality and also lose part of its intimidating power.

By far, it is in the dimension *Province* that the TT presents more mismatches. The writer's objective to create a contract is not fully accomplished by the TT due to problems in the TT relating to the inadequate translation of some legal terms, of verb forms and tenses expressing obligation and the lack of cohesive devices and structural parallelism, all of which jeopardize the interpersonal functional component. Similarly, these mismatches weaken the ideational functional component which is strongly marked in the ST, since the clear and efficient relaying of information is essential for the fulfillment of what is prescribed by the clauses of the contract.

The *overtly erroneous errors* in the TT detract from the ideational functional component for they prevent information from being passed on clearly and efficiently. These errors also have an impact on the interpersonal functional component by disturbing a fluent reading of the text.

To sum up, the ideational and interpersonal components of the text's function have not been preserved in the contributing dimensions. In addition, the *overtly erroneous errors* weaken the ideational functional component by detracting from a clear and efficient passing on of information in the instances specified above, and also affect the interpersonal functional component.

3.3.4. Analysis of Translation Text no. 2.3

COVERTLY ERRONEOUS ERRORS

The TT presents mismatches in the following situational dimensions:

DIMENSIONS OF LANGUAGE USE:

MEDIUM

Syntactic means:

a) [- formal] rendering for [+ formal] structure with "upon" (lines 16 and 19).

E.g.: "com a nomeação do Agente" (line 14). Suggested alternative: "quando da";

b) Omission of the preposition in one instance of the use of prepositional verbs: "acting for and on behalf of" (line 11), translated as "atua em nome de" (line 8). In another instance, "is caused or contributed to" (line 311), is translated as "seja causado

ou tenha a contribuição" (line 313).

In these two cases, however, there seems to be no mismatch. The original meaning is maintained in spite of the omission of the preposition in the first example and the transposition of the verb into a noun, in the second.

Lexical means:

a) Translation of the term "Carrier" (lines 88, 89, 208 and 239) respectively as "deste" (line 83), "suas" (line 84), "seu" (line 200), "ele próprio" (line 229) and translation of "Agent" (line 216, 254 and 255) respectively as "si próprio" (line 208), "ele próprio" (line 243) and "seu" (line 244). However, these renderings for the terms *Carrier* and *Agent* cannot be considered mismatches because they seem to have been given to avoid the repetition of the term in very near position.

PARTICIPATION

Omission of a translation for the word "please" (line 389) giving the sentence "Caso o endereço esteja incorreto, indique abaixo" (line 377) an illocutionary force of order which is not present in the ST.

SOCIAL ATTITUDE

Lexical means:

a) Inadequate translation of "legal status" (line 260) as "estado legal" (line 249), instead of *situação legal* or *capacidade legal*.

Textual means:

a) Use of commas in very long sentences which present very few or no punctuation marks in the ST (TT, lines 54-60, 149-155 and 181-186). Such insertion of commas cannot be considered a mismatch because it is done to conform the text with the structure of the Portuguese language.

PROVINCE

Graphical means:

a) Non-capitalization of "agentes" (line 240), a lexical item which is capitalized in the ST (line 250);

b) Non-utilization of boldface type in the title "Nota" (line 378).

Lexical means:

a) Different translations for two lexical items repeated in the ST to restrict interpretation.

E.g.: "such" (lines 39, 60 and 104) is translated as "as" (line 36), "tais" (line 56) and "tal" (line 98); "with respect to" (lines 106 and 371), translated as "Em relação aos" (line 100) and "relativamente aos" (line 360);

b) Translation of expressions that introduce hypotheses into expressions that state certainty.

E.g.: "where the Carrier participates in" (lines 155 and 325) translated as "Nos locais em que o Transportador participe" (lines 149 and 315).

c) Omission of several items causing the text to be less precise and emphatic than the ST.

E.g.: "the" (line 7); "on the services of" (line 77); "then" (line 205); "through the system" (line 177); "in the course of" (line 305);

d) Insertion of some lexical items apparently to avoid imprecise sentences in Portuguese.

E.g.: "o qual" (line 8); "de direitos" (lines 49 and 293); "serviço de" (line 92); "tabelas de" (line 99); "suas" (line 105); "realizada" (line 135); "no sentido de" (line 166); "que... seja" (line 187); "proveniente" (line 311); "caso em que" (line 348).

The insertion of "caso em que" (line 348), for instance, may have resulted from the translator's effort to avoid the use of the awkward prepositional phrase *exceto que*, as a literal translation of the clause would have provided.

e) Inadequate translation of the legal expression *legal status*, as mentioned in *Social Attitude*, above.

Textual means:

Theme dynamics:

a) Omission of an anaphoric term.

E.g.: "such" (lines 130 and 216);

Clausal Linkage:

a) Omission of the logical connector "then" (line 205).

OVERTLY ERRONEOUS ERRORS

1. Several breaches of the target language system can be found in the TT:

1.1) *Cases of ungrammaticality:*

a) Use of "os quais" (line 193) instead of *que* when referring to "remuneração", implying that a reference is being made to "passagens aéreas e serviços auxiliares" (line 191);

b) Inadequate use of a definite article instead of an indefinite article.

E.g.: "a transaction" (line 141) translated as "a negociação" (line 135); "provide a passenger" (line 80) translated as "fornecer ao passageiro" (line 75);

c) Inadequate use of preposition "sobre" (line 33) instead of *do*.

1.2) *Cases of dubious acceptability:*

a) Unnecessary insertion of "localizada" (line 4) and "endereçadas" (line 334);

b) Repetition of nouns and expressions that could have been avoided in Portuguese with the use of pronouns, for the sake of style.

E.g.: "e quaisquer das Cláusulas deste Contrato, as Cláusulas deste Contrato prevalecerão" (line 67); "que sua agência é uma agência do Transportador" (line 125);

2. Various cases of mismatches of denotative meaning can be verified:

2.1) *Wrong selections:*

a) Inadequate translation of some lexical items, in the context where they appear.

E.g.: "withdraws" (line 279) translated as "se retira" (line 269), instead of *renuncia*; "provided for under" (line 40) translated as "fornecidas, relativas ao" (line 37), instead of *estabelecidas de acordo com* or *estipuladas de acordo com*; "deposited" (line 142) translated as "confiadas" (line 136), instead of *depositadas*; "made thereunder" (line 299) translated as "dele resultante" (line 290), instead of *emitido conforme aquele Regulamento*.

In the last example, the inadequate translation of both words creates a strange clause according to which an arbitration award *results from* the Sales Agency Rules, as if such a situation were possible. In fact, what the original clause seems to prescribe is that the Agent should abide by any arbitration award issued in accordance with such Rules.

b) Complete restructuring of the text contained in the "Note" (line 391), which results in the omission of the phrase "such formalities must be accomplished" (line 393), and creates an obligation that is not present in the ST: "The space below may be used for" (line 394), translated as "o espaço abaixo é destinado a" (line 378);

c) Inadequate translation of "and" (line 248) as "ou" (line 238).

d) Inadequate use of demonstrative pronoun to replace the adverb *hereunder*.

E.g.: "by the Agent hereunder" (line 307) translated as "por este Agente" (line 299);

2.2) Omissions:

a) Omission of "(s)", with the translation of "specific Location(s)" (line 276) as "a um Endereço específico" (line 265);

b) Omission of the conjunction "and" (line 96), which implies that the

representations can be made by means other than the agreement, provided that the Agent have the Carrier's authorization.

2.3) *Insertions:*

a) Inadequate insertion of "junto" (line 186), a word which does not seem to have any syntactic function in the sentence where it is inserted and which does not collocate adequately with "sejam prestadas contas" (line 186).

Statement of Quality

The comparison of ST.2 and TT 2.3 indicates the following: In *Medium*, ST's *written to be read* mode is not matched in only one instance in the TT, in which a [- formal] rendering for a [+ formal] structure is given. Though this mismatch seems not to affect the ideational functional component since information is imparted in an efficient way, it detracts from the interpersonal functional component by failing to preserve the writer's intention to create a [+ formal] written text.

In *Participation*, the TT appears to be less concerned with eliciting the addressee participation by means of a sentence with the illocutionary force of an invitation, and gives the sentence the illocutionary force of order that is not present in the ST. Though it seems there is no serious harm to the ideational functional component, the interpersonal functional component is weakened because the only instance throughout the entire contract in which the ST uses a participatory addressee-involving tone is not present in the TT, with the omission of a translation for the word *please* in the TT.

Though the mismatch found in *Social Attitude* does not affect the TT seriously, it is detrimental to both functional components of the text's function since it renders the TT

less formal and consequently, to a minor extent, less socially distant and impersonal.

The mismatches in *Province* which cause the TT to be less precise and textually cohesive, as well as the *overtly erroneous errors*, violate the ideational functional component by detracting from a clear and efficient passing on of information in those instances mentioned above.

In sum, it seems the ideational component has been violated in the TT by the mismatches and *overtly erroneous errors* found. The interpersonal functional component has also been infringed upon, especially in the instance reported in *Participation* in which this component is overtly marked in the ST, but not in the TT.

CONCLUSION

The main purpose of this study was to verify whether Juliane House's model of translation quality assessment would be useful in the identification and explanation of the errors and inadequacies found in the translation of contracts from English into Portuguese.

A second objective was to check to what extent the model would be useful in the comparison of different translations of the same source text.

Concerning the main purpose, the application of the model to the *corpus* of this study revealed that it proved applicable to the assessment of translations of contracts from English into Portuguese. However, with respect to this type of translation, the Dimensions of Language User - one of the two dimensions used in the analysis of both STs and TTs - did not prove very useful. For instance, a problem concerning the geographical origin of ST.2 was found in the analysis of that text. However, this problem did not seem to affect the TTs analyzed. Maybe the analysis of a larger number of translation texts of the same source text would add more information as to the usefulness of those Dimensions to the assessment of the translations of contracts.

The application of the model helped identify numerous breaches of equivalence in the translation texts, and such breaches were given House's classification of *overtly erroneous errors* and *covertly erroneous errors*.

It seems that any careful comparative reading of both ST and TT would reveal

errors. Regarding the *overtly erroneous errors* found, the application of the model seems to be useful only to a minor degree in that it leads to such careful and detailed reading. It is in the identification of the *covertly erroneous errors* that the model proved to be very useful.

As pointed out by Rodrigues (1985:186 - my translation), the model "makes evident some breaches of equivalence that would probably be left unnoticed, if it were not for the application of the model."

Hence, some problems that are not easily identifiable but that do make some translation texts seem to be inadequate, and give the reader the impression that the translation is not a *good* one, are made visible by the application of the model.

As far as contract translation is concerned, examples of these problems are the variation in the degree of formality of some items, the non-utilization of devices that make the text cohesive, and the translation of technical terms by terms which are also technical terms and thus do not constitute error in the denotative meaning, but which are not as precise as their counterparts in the ST.

From all the breaches of equivalence made visible by the application of the model, the following errors seemed to have special importance in the translation of contracts: the translation of [+ formal] terms in English into [- formal] counterparts in Portuguese, the alteration of the TT in the degree of (a)symmetry in the social role relationship present in the ST, and the occurrence of omissions and insertions.

In the first case, the frequent use of [- formal] terms may have serious consequences for the possibility of utilizing the translation, especially when we consider that to be

binding and enforceable in Brazil, contracts signed in a foreign language must be translated into Portuguese and registered with the appropriate Corporate Registrar's Office. Hence, if the translation is to be registered as an official document the type of language used does matter.

In the second case in which a breach of equivalence is especially important in the translation of contracts, that is, when there is a change in the degree of (a)symmetry, it is important to point out that the main purpose and also the main outcome of a contract is the creation of obligations between the parties. When the translator chooses linguistic devices or items that end up weakening the obligational character of the clauses of a contract, serious consequences may arise to the enforceability of the contract. This is evident in the translation of "shall do" as "pode fazer".

Likewise, if the translated version of a contract displays a less intimidating tone due to the linguistic means employed, a hesitant party may not fully understand the true obligational character of the contract and sign it with less precaution than if the dominating power of the other party is clear. On the other hand, if the dominating power of the other party is maintained in the TT, the contract will probably be looked upon with suspicion by the party in disadvantage, and a more detailed and careful reading of the contract will probably precede its signing by that hesitant party. Therefore, the weakening of the degree of (a)symmetry may lead to an inadequate translation of a contract.

Finally, the omissions and insertions made visible by the use of the situational dimensions reinforced the model as a useful tool in the identification of problems in the contracts analyzed. I am not referring here to those omissions and insertions that cause

errors of denotative meaning, being thus classified as *overtly erroneous errors*, and that are easily identified. Instead, a reference is being made to those omissions and insertions that make the text less precise, emphatic or formal and thus may de-characterize the text as a contract. Considering that omissions and insertions seemed to be, by far, the most frequent problematic occurrences in the translation texts analyzed, the fact that House's model proved very helpful in the identification of those omissions and insertions seems to be a significant finding of this study.

The second purpose of this dissertation was to verify the usefulness of the model in the comparison of different translations of the same source text. Again, the model proved to be a useful tool. When a comparison is made between different translations of one source text, it is common to have the impression that each translation text is good in one part, but is not so well translated in another. Therefore, at times it is difficult to give a positive and precise statement as to which translation seems to be the most adequate, since errors are sometimes not so easily identified.

House's model helps bring to surface all problematic items and provides a practical way of listing those errors and inadequacies. This makes it easier for the evaluator to verify which translation seems to be the most adequate. The evaluator has then to check from among the errors made, which ones have a stronger impact on the TT. The adequacy of a translation text will be asserted based not only on a simple comparison between the number of mismatches listed on each TT, but on the impact each one of those errors had on the quality of the translation text. In addition, the statements of quality provide a fast and objective means of text comparison.

Another aspect that is also revealed by the application of the model refers to the

usefulness of the concepts of ideational and interpersonal functional components. These components proved to be useful in the analysis and comparison of the STs and TTs. When these components are taken into consideration in the assessment of a contract translation, one is made aware of the fact that although the ideational component is strongly marked throughout the text, the interpersonal component is also sometimes well-marked, and should therefore be taken into account and preserved in translation.

However, the utilization of the model has some shortcomings. As pointed out by Rodrigues (1985:189 - my translation), the application of the model requires "a very laborious and time-consuming descriptive analysis." This fact makes the model useful for translation evaluators, but of little practical use for practicing translators, who obviously do not have the time to check the quality of their translations by means of the utilization of the model.

Rodrigues' suggestion (1985:188) that the translator apply the model to the ST before translating a text seems impracticable, especially in our country where, due to the price paid for translation work, practicing translators are usually pressed for time so that they may translate the number of pages per month that enables them to earn a decent living.

As to House's translation typology, as expected, the type of text dealt with in this study seems to require a *covert translation*, due to the fact that both the English and the Portuguese versions of the contract enjoy the status of *originals* in the source and target cultures, respectively, as if the corresponding addressees were directly addressed.

As a follow-up study, it is suggested this model be applied to a larger number of contracts, aiming at verifying which situational dimensions are more important than

others in the translation of contracts, as it is hypothesized that the dimensions *Social Attitude* and *Social Role Relationship* are. Such a study could produce a specific version of House's model that would be useful in the assessment of contract translations.

Another study could utilize the notions presented in House's dimension *Social Role Relationship* to investigate in detail the power relations existing among all those persons involved in the signing of contracts. These relations were only briefly presented in this study, and seemed to deserve a more detailed description.

In addition, as this study deals with only one type of text, it became impossible to verify the usefulness and applicability of the concepts of *second level function* and *cultural filter*, introduced by House in her study. It is therefore suggested that future studies utilizing different types of texts make an in-depth analysis of these two concepts.

Finally, it should be highlighted that the application of House's model also proved it to be very useful in refining the translators' sensibility to the subtle implications their choice of words or structures can bring, and to make them more conscious of the results of those choices in the quality of their work.

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APPENDIXES

APPENDIX 1

SOURCE TEXT NO. 1

AGREEMENT

MEMORANDUM OF AGREEMENT MADE THIS

between

5 UNIVERSIDADE
CAMPUS UNIVERSITARIO,
BRAZIL

Acting through its publisher

EDITORA DA UNIVERSIDADE

10 (hereinafter termed the Publishers) of the One Part,
and

UNIVERSITY LIMITED

ENGLAND (hereinafter termed the Proprietors) of the Other
Part,

15 **WHEREAS** the Proprietors are the proprietors of the Work
entitled:

STUDY GUIDE

(hereinafter termed the Work),

NOW IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:-

20 1. Subject to the terms detailed in this Agreement, the
Proprietors hereby grant to the Publishers the
exclusive licence to translate and publish the Work in
volume form in the Portuguese language (hereinafter
termed the Translation) and sell the said Work in the
25 following territories:

Brazil

2. The Publishers shall make the following payments to the
Proprietors, in accordance with the provisions of

Clause 13 hereof, namely:-

- 30 (a) The sum of 400 (four hundred pounds) payable on
signature of this Agreement in advance and on
account of any sums which may become due to the
Proprietors under this Agreement. The said
payment in advance is not recoverable in the event
35 of any default by the Publishers in carrying out
the terms of this Agreement.
- (b) On the published price of all copies of the
Translation issued by the Publishers:-
- (i) A royalty of 10% of the first 2000 copies
40 sold
- (ii) A royalty of 7,5%, on all copies beyond the
first 2000 copies sold.
3. This Agreement shall not come into effect until the
45 Proprietors have received the advance payment detailed
in Clause 2(a).
4. The Publishers shall arrange for the Translation of the
Work to be made faithfully and accurately by a
qualified and competent translator and shall publish it
50 before 1st March 1995. In the event of the Publishers
failing to issue work on or before 1st March 1995, the
rights herein conveyed shall revert to the Proprietors
and the advance payment provided in Clause 2.(a) hereof
shall be forfeit without prejudice to any claim which
55 the Proprietors may have for damage and/or otherwise.
5. The Publishers shall not alter or abridge the said Work
in any way without first providing the Proprietors with
a complete specification, in the English language, of
the alterations and abridgements that are proposed. The
60 Proprietors will, within thirty days of receipt of the
same advise the Publishers of its approval or non-

approval of or comments on the specification.

- 65 6. The Publishers agree to include if requested by the Proprietors any new manuscript and/or illustrations supplied during the preparation of the Translation, such new manuscript and/or illustrations remaining the copyright of the Proprietors.
- 70 7. The Publishers shall be responsible for obtaining, wherever necessary, permission for the use in the Translation of any Third Party Copyright material from the Work. The Publishers shall also be responsible for paying any fees required for such permissions and for ensuring that appropriate acknowledgement is made in the Translation. The Proprietors reserve the right not
75 to supply the Publishers with duplicate production material for illustrations contained in the Work until the Proprietors have received written confirmation from the Publishers that such permission has been obtained.
- 80 8. The Publishers undertake to ensure that, wherever possible, the printing, paper and binding of the Translation shall be of the highest quality.
- 85 9. The name of the University Ltd. shall appear on the cover, jacket and title page of every copy of the Translation issued and on the reverse of the title page shall appear any Copyright notice printed in the Work, together with the following acknowledgement:
"This edition is published by arrangement with University Ltd."
- 90 10. Six free copies of the Translation shall be sent to the Proprietors on publication, together with a note of the actual date of publication and the published price of the Translation.
11. If at any time the Publishers allow the Translation to go out of print and if they have failed to publish a

- 95 new edition within 12 months thereafter then in such
case all rights granted under this Agreement shall
revert to the Proprietors forthwith and without further
notice and without prejudice to any monies already paid
or then due to the proprietors from the Publishers.
- 100 12. The Publishers shall not dispose of any Subsidiary
Rights in the Translation without obtaining prior
written consent of the Proprietors.
13. (a) The Publishers shall in respect of any edition of
the said Work published by them render to the
105 Proprietors accounts of the copies sold during the
six months preceding the 30th June and the 31st
December respectively in each year and shall
deliver statements of accounts within sixty days
of the said respective dates and shall at the time
110 of delivery of the said statements pay any sums
shown thereby to be due. All the said payments and
royalties shall be made at the exchange rate
prevailing at the time the statement is due, and
in British Pounds Sterling, without any
115 deduction for exchange charges, commission or
other cause.
- (b) Should any account or payments specified herein be
three months overdue the licence herein granted
shall forthwith lapse and all rights conveyed by
120 this Agreement shall without further notice
revert to the Proprietors. The Publisher
undertakes forthwith upon being called upon so to
do to execute any formal document required to give
effect to the provisions of this paragraph.
- 125 (c) The Proprietors or their authorised representative
shall have the right upon written request to
examine the records of account of the Publishers

in so far as they relate to the sales and receipts
in respect of the Work.

- 130 14. The Proprietors guarantee that they are for the purpose
of this Agreement the sole proprietors of the right to
translate the Work into the Portuguese language and
they have the right to receive all sums due under this
Agreement on behalf of University Ltd.
- 135 15. The Licence hereby granted to the Publishers shall not
be transferred to or extended to include any other
party, nor shall the Translation appear under any
imprint other than that of the publishers, except with
the prior written consent of the Proprietors.
- 140 16. All Rights in the Work, other than those specifically
granted to the Publishers under this Agreement, are
reserved by the Proprietors.
- 145 17. In the event of the Publishers being declared bankrupt
or should they fail to comply with any of the
provisions of this Agreement and not rectify such
failure within one month of having received notice from
the Proprietors to do so by a registered letter sent to
the Publishers at their address given at the
commencement of the Agreement, then in either event
150 this Agreement automatically becomes null and void and
the licence granted to the Publishers herein shall
revert to the Proprietors without prejudice to any
monies paid or due to the Proprietors.
- 155 18. If any difference shall arise between the Publishers
and the Proprietors touching the meaning of this
Agreement or the rights and liabilities of the parties
hereto, the same shall be referred to the arbitration
of two persons (one to be named by each party) or their
mutually agreed umpire, in accordance with the
160 provisions of the Arbitration Act 1979 or any

subsisting statutory modification or re-enactment thereof provided that any dispute between the parties hereto not resolved by arbitration or agreement shall be submitted to the jurisdiction of the English courts.

165 19. This Agreement shall be governed by and interpreted in all respects in accordance with the Law of England.

SIGNED:

170

For and on behalf of UNIVERSITY LTD.

DATE: _____

SIGNED:

175

For and on behalf of UNIVERSIDADE

DATE: _____

APPENDIX 2

TRANSLATION TEXT NO. 1.1

ACORDO

MEMORANDO DO ACORDO FEITO

entre

5 **UNIVERSIDADE**

CAMPUS UNIVERSITÁRIO,

BRASIL

Representada por sua editora

EDITORA DA UNIVERSIDADE

10 (de agora em diante denominada) Os Editores de Uma Parte,
e

UNIVERSITY LIMITED,

ENGLAND (de agora em diante denominada os Proprietários)
de outra parte,

15 **UMA VEZ QUE** os Proprietários são os proprietários do Trabalho intitulado:

STUDY GUIDE

(daqui em diante denominado Trabalho),

FICA POR MEIO DESTES, MUTUAMENTE CONCORDADO O QUE SEGUE:

20 1. Sujeito aos termos detalhados neste Acordo, os Proprietários, por meio deste, concedem aos Editores licença exclusiva para traduzir e publicar o Trabalho na forma de volume na língua portuguesa (daqui em diante denominada a Tradução) e vender o referido Trabalho nos
25 seguintes territórios:

Brasil

2. Os Editores farão os seguintes pagamentos aos Proprietários, de acordo com as disposições da Cláusula 13,

a saber:

- 30 (a) A soma de 400 (quatrocentas libras) pagável na assinatura deste Acordo antecipadamente e por
conta de quaisquer somas que possam tornar-se devidas aos Proprietários sob este Acordo. O referido pagamento antecipado não é recuperável no caso
35 de qualquer falta cometida pelos Editores na execução dos termos deste Acordo.
- (b) Sobre o preço estipulado de todas as cópias da Tradução publicadas pelos Editores:-
- (i) Direitos autorais de 10% sobre as 2000 primeiras cópias vendidas.
40
- (ii) Direitos autorais de 7,5% sobre todas as cópias além das primeiras 2000 cópias vendidas.
3. Este Acordo não se efetuará até que os Proprietários tenham recebido o pagamento antecipado detalhado na
45 Cláusula 2.(a).
4. Os Editores tomarão as providências para que a Tradução do Trabalho seja feita fiel e corretamente por um tradutor competente e qualificado e será publicada antes de 1º de março de 1995. No caso dos editores deixarem de publicar o trabalho em/ou antes
50 do dia 1º de março de 1995, os direitos aqui concordados se reverterão para os Proprietários e o pagamento antecipado estabelecido na Cláusula 2.(a) ficará perdido sem prejudicar qualquer exigência que os Proprietários possam ter por danos e/ou coisa semelhante.
55
5. Os Editores não alterarão ou resumirão o referido Trabalho de modo algum, sem antes fornecer aos Proprietários uma especificação completa, em língua inglesa, das alterações e adaptações que forem propostas.
60 Os Proprietários, dentro de 30 dias do recebimento deste, notificarão os Editores de sua aprovação ou não

aprovação, ou remeterão comentários sobre a especificação.

- 65 6. Os Editores concordam em incluir, se for solicitado pelos Proprietários, qualquer manuscrito novo e/ou ilustrações fornecidas durante a preparação da Tradução, este novo manuscrito e/ou ilustrações permanecerão como direitos autorais dos Proprietários.
- 70 7. Os Editores serão responsáveis pela obtenção, sempre que necessário, da permissão para o uso na Tradução de qualquer material do trabalho com Direitos Autorais de Terceiras Partes. Os Editores também serão responsáveis pelo pagamento de quaisquer taxas exigidas para estas permissões e para assegurar que reconhecimento apropriado seja feito na Tradução. Os Proprietários reservam-se o direito de não fornecer aos Editores material de produção duplicado para ilustrações contidas no Trabalho até que os Proprietários tenham recebido confirmação escrita dos Editores que tal permissão tenha sido obtida.
- 80 8. Os Editores se empenharão em assegurar que, sempre que possível, a impressão, o papel e a encadernação da Tradução sejam da mais alta qualidade.
- 85 9. O nome da University Ltd. aparecerá na capa, na "orelha" e na página título de cada cópia da Tradução publicada e no reverso da página título deverá aparecer qualquer menção de Direitos Autorais impressa no Trabalho, junto com o seguinte esclarecimento: "Esta edição é publicada por acordo com a University Ltd."
- 90 10. Seis cópias grátis da Tradução serão enviadas aos Proprietários no lançamento, com a informação da data de publicação e o preço estipulado para a Tradução.
11. Se em qualquer momento os Editores permitirem que a Tradução se esgote e se deixarem de publicar uma nova

- 95 edição dentro de 12 meses, neste caso, todos os direitos concedidos sob este Acordo se reverterão aos Proprietários, sem aviso prévio e sem prejuízo para quaisquer quantias já pagas ou então devidas aos Proprietários pelos Editores.
- 100 12. Os Editores não poderão fazer uso de quaisquer Direitos Subsidiários sobre a Tradução sem antes obter consentimento por escrito dos Proprietários.
- 105 13. (a) Os Editores, com respeito a qualquer edição do referido Trabalho por eles publicado, apresentarão aos Proprietários relatórios das cópias vendidas durante os seis meses, anteriores ao dia 30 de junho e 31 de dezembro respectivamente de cada ano, e entregarão declarações de contas dentro de 60 dias das respectivas mencionadas datas, e, na época de entrega das referidas declarações pagarão quaisquer somas mostradas, que sejam devidas. Todos os referidos pagamentos e Direitos Autorais deverão ser feitos na época em que a declaração for feita e em libras esterlinas inglesas, sem qualquer dedução de impostos cambiais, comissões ou outros.
- 110
- 115
- 120 (b) Se qualquer conta ou pagamento aqui estabelecido ficar 3 meses atrasado, a licença por meio deste concedida, cessará e todos os direitos estipulados por este acordo deverão reverter sem aviso prévio aos proprietários. Os Editores se comprometem, se forem solicitados, a providenciar quaisquer documentos formais exigidos para dar efeito às disposições deste parágrafo.
- 125 (e) Os Proprietários ou seus representantes autorizados terão o direito, através de solicitação

- escrita, de examinar a contabilidade dos Editores, contanto que esteja relacionada às vendas e receita do Trabalho.
- 130
14. Os Proprietários garantem, que para os propósitos deste Acordo, são os únicos proprietários dos direitos de tradução do Trabalho para a língua Portuguesa e têm o direito de receber todas as somas devidas sob este
- 135 Acordo em nome da University Ltd.
15. A Licença aqui concedida aos Editores não será transferida ou estendida a nenhuma outra parte, nem a Tradução aparecerá sob qualquer impressão a não ser aquela dos Editores, exceto com o prévio consentimento escrito dos Proprietários.
- 140
16. Todos os direitos sobre o Trabalho, a não ser aqueles especificamente concedidos aos Editores sob este Acordo, são reservados aos Proprietários.
17. No caso de falência dos Editores ou se os mesmos deixarem de cumprir qualquer das disposições deste Acordo e não retificarem tais falhas dentro de um mês após terem recebido dos Proprietários aviso para assim o fazerem, por meio de uma carta registrada enviada aos Editores para o endereço dado no início do acordo, em
- 145
- ambos os casos este Acordo automaticamente torna-se nulo e sem efeito e a licença aqui concedida aos Editores se reverterá aos Proprietários sem prejuízo a quaisquer somas pagas ou devidas aos Proprietários.
- 150
18. Se qualquer divergência surgir entre os Editores e Proprietários, no tocante ao conteúdo deste Acordo ou
- 155
- aos direitos e responsabilidades das partes aqui especificadas, a mesma será julgada por duas pessoas (uma nomeada por cada parte) ou um juiz designado de comum acordo e conforme as disposições do "Ato de Julgamento" de 1979, ou qualquer modificação estatu-
- 160

tária existente ou legislação pertinente sendo que qualquer desacordo entre as partes, não resolvido por julgamento ou acordo, será submetido a jurisdição dos tribunais ingleses.

165 19. Este Acordo será regido e interpretado em todos os sentidos, de acordo com a Lei da Inglaterra.

ASSINADO:

170

Por em nome da UNIVERSITY LTD.

DATA: _____

ASSINADO:

175 Por em nome da UNIVERSIDADE

DATA: _____

APPENDIX 3

TRANSLATION TEXT NO. 1.2

CONTRATO

Memorando de Contrato realizado em
entre

5 UNIVERSIDADE

CAMPUS UNIVERSITÁRIO,

BRAZIL

representado através de seu editor

EDITORA DA UNIVERSIDADE

10 (doravante designado os Editores) de Uma das Partes,

e

UNIVERSITY LIMITED,

ENGLAND (doravante designado os Proprietários)

da Outra Parte,

15 **CONSIDERANDO QUE** os Proprietários são os proprietários do
Trabalho intitulado:

GUIA DE ESTUDO

(doravante designado o Trabalho),

TEM ENTRE SI, JUSTO E CONTRATADO O QUANTO SEGUE:

20 1. Sujeito às condições especificadas neste Contrato, pelo
presente, os Proprietários concedem aos Editores a
licença exclusiva para traduzir e publicar o Trabalho
em forma de volume para a língua portuguesa (doravante
designado a tradução) e de comercializar o Trabalho
25 acima citado nos seguintes territórios:

Brazil

2. Os Editores deverão efetuar os seguintes pagamentos aos
Proprietários, conforme as disposições da Cláusula 13
deste, isto é:-

- 30 (a) A quantia de 400 (quatrocentas libras) à pagar no
ato da assinatura deste Contrato antecipadamente e
por conta de qualquer quantia que poderá ser
35 pagável aos Proprietários nos termos deste
Contrato. O referido pagamento antecipado não
será recuperável caso haja qualquer falha por
parte dos Editores na execução das condições deste
Contrato.
- (b) Sobre o preço publicado de todas as cópias da as
Tradução distribuídas pelos Editores:-
- 40 (i) Direitos autorais de 10% nas primeiras 2000
cópias vendidas.
- (ii) Direitos autorais de 7.5% sobre todas as
cópias além das primeiras 2000 cópias
vendidas.
- 45 3. Este Contrato não entrará em vigor até que os
Proprietários tenham recebido o pagamento adiantado
especificado na Cláusula 2.(a).
4. Os Editores deverão tomar providências para que a a
Tradução do Trabalho seja feita corretamente e
50 fielmente por um tradutor qualificado e competente e
deverão publica-lo antes do dia 1 de março de 1995.
Caso os Editores não cumprirem o ato de publicar o
trabalho no dia 1 de março de 1995 ou antes deste
prazo, os direitos aqui cedidos deverão ser revertidos
55 aos Proprietários e o pagamento adiantado mencionado
na Cláusula 2.(a) deste instrumento deverá ser
confiscado sem prejuízo de qualquer pedido que os
Proprietários poderão fazer de indenização e/ou do
contrário.
- 60 5. Os Editores não poderão alterar ou resumir o Trabalho
acima mencionado de forma alguma sem antes fornecer
aos Proprietários uma especificação completa, na

- 65 lingua inglesa, das alterações e resumos propostos. Os
Proprietários notificarão os Editores, dentro de
trinta dias do recebimento da mesma, sobre a sua
aprovação ou não, ou comentários sobre a
especificação.
6. Os Editores concordarão em incluir, caso seja
requisitado por parte dos Proprietários qualquer novo
70 manuscrito e/ou ilustrações proporcionado durante a
preparação da Tradução, tais novos manuscritos e/ou
ilustrações serão direitos autorais dos Proprietários.
7. Os Editores serão responsáveis pela obtenção, sempre
que seja necessário, da permissão para o uso na
75 Tradução de qualquer material de Direito Autoral de
Terceiros do Trabalho. Os Editores também serão
responsáveis pelo pagamento de quaisquer taxas
exigidas para tais permissões e para assegurar que o
conhecimento apropriado seja feito na Tradução. Os
80 Proprietários reservam-se no direito de não fornecer
aos Editores material de produção duplicata para
ilustrações contidas no Trabalho até que os
Proprietários tenham recebido confirmação por escrito
dos Editores que a permissão mencionada foi obtida.
- 85 8. Os Editores comprometem-se em assegurar que sempre que
possível, a impressão, papel e encadernação da
Tradução será da mais alta qualidade.
9. O nome da University Ltd. deverá aparecer na capa,
sobrecapa e página de rosto de cada cópia da Tradução
90 publicada e no verso da página de rosto deverá
constar qualquer nota de Direito Autoral impresso no
Trabalho, juntamente com a seguinte notificação: "Esta
edição é publicada em convênio com University Ltd."
10. Seis cópias grátis da Tradução deverão ser enviadas
95 aos Proprietários no ato da publicação juntamente com

um aviso da data exata da publicação e o preço publicado da Tradução.

- 110 11. Caso eventualmente os Editores permitam que a Tradução não seja impressa e caso não consigam publicar uma nova edição dentro do período de 12 meses subsequentemente, então neste caso todos os direitos concedidos nos termos deste contrato deverão ser revertidos aos Proprietários imediatamente e sem avisos futuros e sem prejuízo em relação à quantias já pagas ou devidas aos proprietários pelos Editores.
- 105 12. Os Editores não poderão vender quaisquer Direitos Subsidiários na Tradução sem obter um consentimento prévio por escrito por parte dos Proprietários.
- 110 13. (a) Os Editores deverão, em relação à qualquer edição do tal Trabalho publicado por eles, prestar contas aos Proprietários das cópias vendidas durante os seis meses precedentes a 30 de junho e a 31 de dezembro respectivamente de cada ano e deverão enviar os extratos de contas dentro de sessenta dias das respectivas datas mencionadas, e deverão, na ocasião da entrega dos referidos extratos pagar quaisquer somas apresentadas à vencer. Todos os pagamentos e direitos autorais acima referidos deverão ser realizados conforme a taxa de câmbio em vigor na ocasião do vencimento do extrato, e em Libras Esterlinas Britânicas, sem qualquer dedução para despesas de câmbio, comissões ou outros motivos.
- 115 120
- 125 (b) Caso qualquer conta ou pagamento aqui especificados estejam atrasados por três meses, a licença aqui concedida imediatamente expirará e todos os direitos exprimidos neste Contrato deverão, sem notificações adicionais, reverterem-

130 se aos Proprietários. O Editor compromete-se
imediatamente, caso seja chamado para executar
qualquer documento formal exigido para dar efeito
às disposições deste parágrafo.

135 (c) Os Proprietários ou seus representantes
autorizados deverão ter o direito, mediante
pedido por escrito de examinar os registros da
conta dos Editores na medida em que estas estejam
relacionadas às vendas e recibos em relação ao
Trabalho.

140 14. Os Proprietários garantem que para fins deste
Contrato, eles são os únicos proprietários do direito
de traduzir o Trabalho para a língua portuguesa e
possuem o direito de receber todas as quantias a
receber sob este Contrato em nome da University Ltd.

145 15. A Licença aqui concedida aos Editores não poderá ser
transferida ou prorrogada para que qualquer outra
parte seja incluída, nem a Tradução poderá aparecer
sob qualquer outra impressão que não seja a dos
editores, exceto com prévio consentimento por escrito
dos Proprietários.

150 16. Todos os Direitos do Trabalho, com excessão daqueles
especificamente concedidos ao Editor sob este
Contrato, são reservados pelos Proprietários.

155 17. Caso seja declarada a falência dos Editores ou que
estes venham a não cumprir com quaisquer das
disposições deste Contrato, e não retifiquem tal falha
dentro de um mês após terem recebido notificação dos
Proprietários para que assim o façam através de carta
registrada enviada aos Editores no endereço mencionado
no início do Contrato, então, em ambos os casos este
160 Contrato automaticamente tornar-se-a nulo e sem efeito
e a licença aqui concedida aos Editores

deverá reverter-se aos Proprietários sem prejuízo à qualquer quantia de dinheiro paga ou devida aos Proprietários.

- 165 18. Caso surja qualquer diferença entre os Editores e os Proprietários em relação aos propósitos deste Contrato ou dos direitos e responsabilidades das partes com referência a este, as mesmas deverão recorrer à arbitragem de duas pessoas (cada parte nomeará uma) ou
170 ao seu árbitro mutualmente acordado, conforme as disposições do Ato de Arbitragem de 1979 ou qualquer modificação legal existente ou restabelecimento desta, contanto que qualquer litígio entre as partes com referência a este assunto não resolvido por arbitragem
175 ou acordo, deverá ser submetido à jurisdição dos Tribunais Ingleses.
19. Este Contrato será regido e interpretado sob todos os aspectos conforme a Lei da Inglaterra.

180

ASSINADO:

Em nome de UNIVERSITY LTD.

DATA:

185 ASSINADO:

Em nome de UNIVERSIDADE

DATA:

APPENDIX 4

TRANSLATION TEXT NO. 1.3

CONTRATO

MEMORANDO DE CONTRATO CELEBRADO AOS

entre

5 UNIVERSIDADE

CAMPUS UNIVERSITÁRIO,

Agindo através do seu Editor,

EDITOR DA UNIVERSIDADE

(doravante denominados os Editores) por um lado,

10 e

UNIVERSITY LIMITED, ENGLAND (doravante denominados os Proprietários) por outro lado.

CONSIDERANDO QUE os Proprietários são os detentores do direito de propriedade sobre a Obra denominada GUIA DE

15 ESTUDOS (doravante denominada a Obra),

FICA, PELO PRESENTE, MUTUAMENTE ACORDADO COMO SEGUE:

1. Sujeito aos termos especificados no presente Contrato, os Proprietários, pelo presente, concedem aos Editores a licença exclusiva para traduzir e publicar a Obra na forma de compêndio, no idioma português, (doravante denominada a Tradução) e vender a referida Obra nos seguintes territórios: Brasil.

20

2. Os Editores efetuarão os seguintes pagamentos aos Proprietários, de conformidade com o disposto na Cláusula 13 do presente, ou seja:

25

(a) O montante de 400 (quatrocentos libras) pagáveis quando da assinatura deste Contrato, adiantadamen-

- 30 te, e por conta de quaisquer quantias que possam
se tornar devidas aos Proprietários, segundo
este Contrato. O referido pagamento adiantado
não será reembolsável no caso de qualquer ina-
dimplimento por parte dos Editores em cumprir os
termos do presente Contrato.
- 35 (b) Sobre o preço publicado de todas as cópias da
Tradução publicada pelos Editores:
- (i) Um "royalty" de 10% sobre as primeiras 2000
cópias vendidas.
- (ii) Um "royalty" de 7.5% sobre todas as cópias
40 vendidas, além das 2000 primeiras.
3. O presente Contrato não entrará em vigor até que os
proprietários tenham recebido o pagamento estipulado
na Cláusula 2(a).
4. Os Editores providenciarão para que a Tradução da
45 Obra seja feita de forma fiel e correta, por um tradu-
tor qualificado e competente, e a publicará antes de
1º de março de 1995. No caso de os Editores deixa-
rem de publicar a Obra em ou antes de 1º de março de
1995, os direitos aqui transferidos reverterão aos
50 Proprietários e o pagamento adiantado previsto na
Cláusula 2 (a) do presente ficará perdido, sem prejuí-
zo de qualquer reivindicação que os Proprietários pos-
sam ter por dano e/ou por outro motivo.
5. Os proprietários não alterarão ou reduzirão a mencio-
55 nada Obra, de nenhuma forma, sem primeiramente forne-
cer aos proprietários uma especificação completa, no
idioma inglês, das alterações e reduções propostas. No
prazo de trinta dias após recebimento daquela especi-
ficação, os Proprietários informarão aos Editores so-
60 bre a aprovação ou não da mesma, ou farão seus comen-
tários sobre ela.

6. Os Editores concordam em incluir, se solicitados pelos Proprietários, quaisquer novos manuscritos e/ou ilustrações fornecidas durante o preparo da Tradução e tais novos manuscritos e/ou ilustrações permanecerão como sendo "copyright" dos Proprietários.
7. Os Editores serão responsáveis pela obtenção, quando necessária, da permissão para o uso na Tradução de qualquer material da Obra que seja "copyright" de Terceiros. Os Editores também serão responsáveis por pagar quaisquer taxas exigidas para tais permissões e para assegurar que o crédito competente seja incluído na Tradução. Os Proprietários se reservam o direito de não fornecer aos Editores material de produção em duplicata para as ilustrações contidas na Obra até que os Proprietários tenham recebido confirmação escrita dos Editores de que tal permissão tenha sido obtida.
8. Os Editores comprometem-se a assegurar, sempre que possível, que a impressão, o papel e encadernação da Tradução sejam da melhor qualidade possível.
9. O nome da University Limited constará na capa, na lombada e na folha de título de cada volume da Tradução publicada e no anverso da folha de título constará qualquer aviso de "copyright" impresso na Obra, juntamente com o seguinte crédito: "Esta edição é publicada por acordo com a University Ltd.."
10. Seis cópias grátis da Tradução serão enviadas aos Editores após a publicação, juntamente com um aviso da data real da publicação e o preço publicado da Tradução.
11. Se, a qualquer época, os Editores permitirem que a Tradução se esgote e se eles tiverem deixado de publicar uma nova edição dentro de 12 meses após isso, então, em tal caso, todos os direitos concedidos segundo

- 95 este Contrato reverterão aos Proprietários imediata-
mente e sem outro aviso ou qualquer prejuízo de quais-
quer quantias já pagas ou então devidas aos proprietá-
rios pelos Editores.
- 100 12. Os Editores não se disporão de quaisquer Direitos Sub-
sidiários na Tradução, sem antes obterem o consenti-
mento escrito dos Proprietários.
- 105 13. (a) Em relação a qualquer edição da mencionada Obra
publicada por eles, os Editores prestarão contas
aos Proprietários das Cópias vendidas durante os
seis meses precedentes, respectivamente, a 30
de junho e 31 de dezembro de cada ano e en-
tregarão demonstrativos de contas dentro de seis
dias após aquelas respectivas datas e, à época
da entrega de tais demonstrativos, pagarão quais-
110 quer quantias que constem nos mesmos como sendo
devidas. Todos os mencionados pagamentos e
"royalties" serão efetuados à taxa de câmbio pre-
valecendo à época em que o demonstrativo for de-
vido, e em libras esterlinas britânicas, sem
115 qualquer dedução por despesas cambiais, comis-
são, ou outro motivo.
- 120 (b) Caso qualquer conta ou quaisquer pagamentos
aqui especificados estejam três meses atrasados,
a licença por este concedida ficará imediatamente
cancelada e todos os direitos transferidos por
este Contrato reverterão aos Proprietários, sem
qualquer comunicação. Os Editores comprometem-se,
imediatamente após serem chamados a assim procede-
rem, a assinar qualquer documento formal que seja
125 necessário para fazer vigorarem os dispositivos
deste parágrafo.
- (c) Os Proprietários, ou seu representante autorizado,

- 130 disporão do direito, mediante a solicitação por
 escrito, de examinarem os registros das contas
 dos Editores no que os concerne às vendas e aos
 recibos relacionados com a Obra.
- 135 14. Os proprietários garantem que para os fins deste
 Contrato eles são os únicos proprietários do direito
 de traduzirem a Obra para o idioma português e que
 dispõem do direito de receber todas as quantias,
 segundo o presente Contrato, em nome da University
 Limited.
- 140 15. A Licença concedida pelo presente aos Editores não
 será transferida ou estendida, a fim de incluir qual-
 quer outra parte, nem a Tradução constará de qualquer
 outra impressão que não seja a feita pelos editores,
 exceto com o prévio consentimento escrito dos Proprie-
 tários.
- 145 16. Todos os direitos sobre a Obra, a não ser os especifi-
 camente concedidos aos Editores segundo este Contrato,
 ficam reservados aos Proprietários.
- 150 17. No caso de os Editores serem declarados falidos, ou
 caso os mesmos deixem de cumprir qualquer dos disposi-
 tivos deste Contrato, e não sanem tal omissão dentro
 de um mês após terem recebido aviso dos Proprietários
 para assim procederem, através de carta registrada en-
 viada aos Editores para o endereço dado ao início
 deste Contrato, então, e em qualquer dos casos acima,
 este Contrato tornar-se-á automaticamente nulo e
155 ineficiente e a licença por ele concedida aos Editores
 reverterá aos Proprietários, sem prejuízo de quaisquer
 quantias pagas ou devidas aos Proprietários.
- 160 18. Se surgir qualquer desentendimento entre os Editores e
 os Proprietários no que diz respeito ao significado
 deste Contrato, ou aos direitos e deveres das partes a

165 ele, o mesmo será levado à arbitragem de duas pessoas (uma a ser nomeada por cada uma das partes), ou a um árbitro mutuamente acordado entre as partes, de conformidade com os dispositivos da Lei de Arbitragem de 1979, ou de qualquer posterior alteração ou nova redação da mesma, contanto que qualquer litígio entre as partes ao presente, que não seja solucionado por arbitragem ou acordo, será submetido à jurisdição dos tribunais ingleses.

170 19. O presente Contrato será regido e interpretado em todos os seus aspectos de conformidade com a lei da Inglaterra.

ASSINADO: ----- . Por e em nome da UNIVERSITY LTD.

175 DATA:-----

ASSINADO:----- . Por e em nome da UNIVERSIDADE-----

DATA:-----

APPENDIX 5

SOURCE TEXT NO.2

PASSENGER SALES AGENCY AGREEMENT

An Agreement made this 15th day of December 1993

BETWEEN

5 AGENCIA DE VIAGENS LTDA.

having its principal office at XXX - BRAZIL

(hereinafter called "the Agent")

AND

each TA Member (hereinafter called "Carrier") which
10 appoints the Agent, represented by the Director General of
TA acting for and on behalf of such TA Member.

WHEREBY IT IS AGREED AS FOLLOWS:

1. EFFECTIVENESS

15 this Agreement shall become effective between the Agent
and the Carrier upon appointment of the Agent by such
Carrier in accordance with the Sales Agency Rules in
effect in the country(ies) of the Agent's Location(s).
Upon coming into effect this Agreement, including any
20 amendments thereto, shall have the same force and
effect between the Carrier and the Agent as though they
were both named herein and had both subscribed their
names as parties hereto.

25 2. RULES, RESOLUTIONS AND PROVISIONS INCORPORATED IN AGREEMENT

2.1 (a) the terms and conditions governing the
relationship between the Carrier and the Agent
are set forth in the Resolutions (and other

30 provisions derived therefrom) contained in the
Travel Agent's Handbook ("the Handbook") as
published from time to time under the authority
of the Agency Administrator and attached to
this Agreement. The Handbook incorporates:

- 35 (i) the Sales Agency Rules,
(ii) the Settlement Plan rules, where
applicable, as set forth in the SP Manual
for Agents,
(iii) such local standards as may be provided
40 for under the Sales Agency Rules,
(iv) other applicable TA Resolutions.

(b) Such Rules, Resolutions and other provisions as
amended from time to time are deemed to be
incorporated in this Agreement and made part
45 hereof and the Carrier and the Agent agree to
comply with them;

2.2 the Agent acknowledges that it has received a copy
of the current edition of the Handbook and has
acquainted itself with the contents thereof. The
50 Agent specifically acknowledges that it has read and
understands the contents of the Handbook, including
but not limited to those dealing with: indemnities
and waiver; custody, issuance and security of
Traffic Documents; the reporting and remitting
55 procedures; and the arbitration procedures;

2.3 the Agency Administrator shall provide the Agent with
subsequent editions of the Handbook and all
amendments thereto. The Agent shall be notified by
the Agency Administrator of any amendments to the
60 contents of the Handbook and such amendments shall
be deemed to be incorporated herein unless within 30
days of receipt of such notification, the Agent

terminates this Agreement by notice in writing to the Agency Administrator;

65 2.4 the terms and expressions used in this Agreement shall, unless the context otherwise requires, have the meanings respectively provided for in the Sales Agency Rules. In the event of any conflict, contradiction or inconsistency between any
70 provisions with which the Agent is required to comply under Subparagraph 2.1 of this Paragraph and any of the provisions of this Agreement, the provisions of this Agreement shall prevail.

75 **3. SELLING CARRIER'S SERVICES**

3.1 the Agent is authorized to sell air passenger transportation on the services of the Carrier and on the services of other air carriers as authorized by the Carrier. The sale of air passenger transportation
80 means all activities necessary to provide a passenger with a valid contract of carriage including but not limited to the issuance of a valid Traffic Document and the collection of monies therefor. The Agent is also authorized to sell such ancillary and other
85 services as the Carrier may authorize;

3.2 all services sold pursuant to this Agreement shall be sold on behalf of the Carrier and in compliance with Carrier's tariffs, conditions of carriage and the written instructions of the Carrier as provided to
90 the Agent. The Agent shall not in any way vary or modify the terms and conditions set forth in any Traffic Document used for services provided by the Carrier, and the Agent shall complete these documents in the manner prescribed by the Carrier;

95 3.3 the Agent shall make only such representations as are

authorised in this Agreement and by the Carrier.

100 3.4 with regard to any transportation the Agent, its
officers or employees may procure on the services of
another air carrier which does not have the Agent
under appointment, the Agent undertakes that it will
not directly or indirectly procure the sale of such
transportation otherwise than strictly in accordance
with the fares, rules and conditions applicable to
the sale of such transportation as published in that
105 other carrier's tariff;

110 3.5 with respect to previously issued Traffic Documents
the Agent, its officers or employees shall issue,
accept, reissue, validate or revalidate (including by
means of reservation alteration stickers) all such
Traffic Documents in accordance with the Carrier's
tariffs, conditions of carriage and written
instructions;

115 3.6 the Agent shall transmit to the Carrier such specific
requests or particulars in connection with each
customer as may be necessary to enable the Carrier to
service each customer efficiently.

4. **OBSERVANCE OF LAWS AND REGULATIONS**

120 the Agent shall observe all government laws and
regulations applicable to the sale of air
transportation, or any other acts performed by the
Agent under this Agreement, in the territory or
territories where the Approved Locations of the Agent
are situated and in all territories to or through
125 which the Agent may sell air passenger
transportation.

5. **AGENCY DESIGNATION**

130 the Agent shall not represent itself as a 'General Agent' or use any other designation, such as 'Air Lines Ticket Office', which would indicate or imply in any way that its office is an office of the Carrier or any Member.

135 **6. CUSTODY AND ISSUE OF TRAFFIC DOCUMENTS AND CUSTODY OF CARRIER IDENTIFICATION PLATES**

140 6.1 Traffic Documents deposited by the Carrier or by the Settlement Plan Management on behalf of the Carrier as the case may be, are and remain the sole property of the Carrier or Plan Management until duly issued and delivered pursuant to a transaction under this Agreement; similarly Identification Plates deposited with the Agent are the sole property of the Carrier at all times. The Agent acknowledges and agrees that it has no proprietary rights to such Traffic Documents and Plates. The Carrier or Plan Management acting on its behalf may, at any time, require that the Agent return such Traffic Documents and Identification Plates, and the Agent agrees to return them immediately;

145 6.2 the Carrier or Plan Management acting on its behalf shall be entitled at any time to audit or procure an audit of Traffic Documents and Identification Plates, or to ascertain that security standards are met;

155 6.3 where the Carrier participates in an automated ticketing system for the issuance of Standard Traffic Documents or other neutral Traffic Documents and the Agent issues such Traffic Documents through the system on behalf of the Carrier, the Carrier may at any time withdraw from the Agent the authority to issue neutral Traffic Documents on its behalf. In the

160

event that the Agent is declared in default or is suspended in accordance with the Sales Agency Rules the Agent shall immediately cease issuing neutral Traffic Documents through the system on behalf of the Carrier as of the date such default or suspension is effective;

6.4 in the event any part of an automated ticketing system is provided to the Agent by a third party, other than an airline participating in such system, the Agent undertakes to obtain written confirmation from the Carrier or the Coordinator that the relevant specifications, function and mode of operation of such system and any changes thereto, conform with standards that are acceptable. The Agent shall not issue Traffic Documents on behalf of the Carrier through the system until such written confirmation has been obtained.

180 **7. MONIES DUE BY AGENT TO CARRIERS - REMITTANCE**

7.1 a Traffic Document shall be issued immediately money is received by the Agent for specified passenger air transportation or ancillary services sold under this Agreement and the Agent shall be responsible for remittance to the Carrier of the amount payable in respect of such Traffic Document;

7.2 all monies collected by the Agent for transportation and ancillary services sold under this Agreement, including applicable remuneration which the Agent is entitled to claim thereunder, are the property of the Carrier and must be held by the Agent in trust for the Carrier or on behalf of the Carrier until satisfactorily accounted for to the Carrier and settlement made;

195 7.3 the Agent shall not pledge, cede, promise or otherwise
transfer to a third party any claims to monies due to
the Agent or to the Carrier, but not yet collected,
for transportation and ancillary services sold under
this Agreement, including applicable remuneration,
200 which the Agent is entitled to claim hereunder.

205 7.4 in the event that the Agent becomes the subject of of
bankruptcy proceedings, is placed in receivership or
judicial administration, goes into liquidation or
becomes subject to a similar legal process affecting
the normal operation of the Agent, then
notwithstanding the normal remittance procedures
under this Agreement, all monies due to the Carrier
or held on behalf of the Carrier in connection with
this Agreement shall become immediately due and
210 payable;

8. REFUNDS

215 the Agent shall make refund only in accordance with
the Carrier's tariffs, conditions of carriage and
written instructions, and against receipt. The Agent
shall only refund Traffic Documents issued by such
Agent.

9. REMUNERATION

220 for the sale of air transportation and ancillary
services by the Agent under this Agreement the
Carrier shall remunerate the Agent in a manner and
amount as may be stated from time to time and
communicated to the Agent by the Carrier. Such
225 remuneration shall constitute full compensation for
the services rendered to the Carrier.

10. RECORDS AND INSPECTION

the Agent shall maintain adequate records and accounts,
230 together with supporting documents, recording the
details of all transactions effected under this
Agreement. Such records, accounts and documents shall
be preserved by the Agent for at least two years from
the date of the transactions to which they relate and
235 shall be available for inspection or for copying by
the Carrier whose Traffic Documents have been issued;

11. CONFIDENTIALITY

11.1 the Carrier agrees that the Carrier and its officers,
240 employees and agents, including the Settlement Plan
Management where applicable, will treat information
and data relating to the Agent coming into its
possession as confidential except to the extent
required by law;

245 11.2 notwithstanding Subparagraph 11.1 of this Paragraph,
the Agent agrees that the Carrier, its officers,
employees and agents; including the Settlement Plan
Management where applicable, may collect, process and
disclose to other parties participating in the SP,
250 except to other Agents, such information and data for
purposes of financial assessment of the Agent or of
the orderly operation of agency administration or of
the Settlement Plan;

11.3 the Agent agrees that the Agent and its officers,
255 employees and any other person acting on the Agent's
behalf will treat information and data relating to
the Carrier coming into its possession as
confidential except to the extent required by law.

260 **12. TRANSFER, ASSIGNMENT, CHANGE OF LEGAL STATUS,
OWNERSHIP, NAME OR LOCATION**

12.1 this Agreement shall not be assigned or otherwise transferred in whole or in part by the Agent to any other person or persons;

265 12.2 in the event that the Agent proposes to effect any change(s) in the legal status, ownership, name(s) and/or address(es) (within the meaning of these expressions as used in the Sales Agency Rules under which the activities of any of its Approved Locations
270 are conducted) the Agent undertakes to give prior notice in accordance with the detailed procedures set forth in those Rules.

13. TERMINATION

275 13.1 this Agreement or its application to a specific Location(s) of the Agent shall be terminated if, in accordance with the Sales Agency Rules:

13.1.1 the Carrier withdraws its appointment of the Agent,

13.1.2 the Agent withdraws from its appointment by the
280 Carrier,

13.1.3 the Agent is removed from the Agency List,

13.1.4 the Agent relinquishes its TA Approval /
Accreditation;

13.2 notice of termination of the Agreement as above may
285 be given at any time by notice in writing. Unless otherwise specified in the Sales Agency Rules, such notice shall take effect no sooner than the last day of the month following the month in which the notice of termination is given, and such notice shall
290 include the effective date of termination, without ay

prejudice to fulfilment by each party of all obligations accrued prior to the date of termination.

14. ARBITRATION

295 if any matter is reviewed by arbitration pursuant to the Sales Agency Rules, the Agent hereby submits to arbitration in accordance with such Rules and agrees to observe the procedures therein provided and to abide by any arbitration award made thereunder.

300

15. INDEMNITIES AND WAIVER

15.1 the Carrier agrees to indemnify and hold harmless the Agent, its officers and employees from and against liability for any loss, injury, or damage, whether
305 direct, indirect or consequential, arising in the course of transportation or other ancillary services provided by the Carrier pursuant to a sale made by the Agent hereunder or arising from the failure of the Carrier to provide such transportation or
310 services, except to the extent that such loss, injury or damage is caused or contributed to by the Agent, its officers, employees or any other person acting on the Agent's behalf;

15.2 the Agent agrees to indemnify and hold harmless the
315 Carrier, its officers and employees from and against liability for any loss, injury, or damage, whether direct, indirect or consequential, arising from any negligent act or omission of the Agent, its officers, employees or any other person acting on the Agent's
320 behalf, or from any breach by the Agent of this Agreement, except to the extent that such loss, injury or damage is caused or contributed to by the

Carrier, its officers or employees;

15.3 where the Carrier participates in an automated
325 ticketing system for the issuance of neutral Traffic Documents and the Agent issues such Traffic Documents through the system on behalf of the Carrier, the Agent further agrees to indemnify and hold harmless
330 the Carrier, its officers and employees for all loss, injury or damage, whether direct, indirect or consequential resulting from the negligent or unauthorised use of the system or any part thereof by the Agent, its officers, employees or contractors (including independent contractors) or any other
335 person acting on the Agent's behalf.

16. NOTICES

all notices to be sent under this Agreement from the Carrier or from the Agency Administrator to the
340 Agent, or from the Agent to the Carrier or to the Agency Administrator shall be sufficient if sent by any means that provides proof of despatch or receipt addressed, as appropriate to:

- the principal office of the Agent,
345 - the principal office of the Carrier, or
the Agency Administrator at the address shown in this Agreement, which address may be changed by notice given in writing from time to time by the Agency Administrator to the Agent.

350

17. APPLICABLE LAW

this Agreement shall be interpreted and governed in all respects by the law of the principal place of business of the Agent, except that, in regard to any
355 matter of dispute arising solely in connection with

the activities of a branch office location situated in a place other than that of the Agent's principal place of business, the law of the place where the branch office is situated shall apply.

360

18. SEVERABILITY

365

if any provision of this Agreement is held to be invalid, this shall not have the effect of invalidating the other provisions which shall nevertheless remain binding and effective between the parties.

19. OTHER AGREEMENTS SUPERSEDED

370

this Agreement shall supersede any and all prior Passenger Sales Agency Agreements between the parties hereto with respect to Approved Locations of the Agent other than in the USA, without prejudice to such rights and liability as may exist at the date hereof.

375

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

Director General of the Transport Association acting as agent for the Carriers referred to in the preamble hereto.

380

by (Authorised Representative)
Agency Services Area 1 - U.S.A.

AGENT: AGENCIA DE VIAGENS LTDA.

385

by (Name, typed or printed)
(Title or capacity)

Signature

Full address BRAZIL

If address is incorrect please indicate below

390

Note: Where in accordance with local law, execution of the Agreement requires the signatures of the parties to be witnessed, or notarised, such formalities must be accomplished. The space below may be used for that purpose.

395

WITNESS (Name, typed or printed)

(Title or capacity)

Signature

400

APPENDIX 6

TRANSLATION TEXT NO. 2.1

CONTRATO PARA AGENCIAMENTO DE VENDAS DE PASSAGENS AÉREAS

Contrato firmado em 15 de dezembro de 1993

ENTRE a

- 5 AGÊNCIA DE VIAGENS LTDA.
com escritório central no BRASIL
(que neste contrato será chamada de "o Agente")

E

- 10 cada um dos membros da Associação de Transportes (TA)
(chamados de "Transportadores" neste contrato), que aqui
indicam o Agente, representados pelo Diretor Geral da TA,
agindo por e em nome de tais membros da referida
associação.

- 15 **ONDE FICA ACORDADO QUE:**

1. VALIDADE

- 20 Este contrato tornar-se-á válido entre o Agente e o
Transportador através da indicação do Agente pelo
Transportador em questão, de acordo com as Leis de
Agenciamento de Vendas em vigor no país ou países onde o
Agente possuir escritórios. Uma vez concretizado, este
25 contrato, com quaisquer emendas neste incluídas, terá a
mesma força e efeito entre o Transportador e o Agente,
como se ambos fossem aqui citados e tivessem assinado este
contrato como partes deste.

2. **LEIS, RESOLUÇÕES E DISPOSITIVOS INCORPORADOS NESTE**
30 **CONTRATO**

2.1 (a) os termos e condições que regem o relacionamento entre o Transportador e o Agente estão descritas nas Resoluções (e em outros dispositivos originados destas),
35 que encontram-se no Guia do Agente de Viagens ("o Guia"), que é regularmente publicado com a autorização do Administrador da Agência, e está anexado a este contrato. Este Guia contém:

- 40 (i) as Leis de Agenciamento de Vendas,
(ii) as regras do plano de compensação de pagamentos, onde aplicáveis, como descritas no Manual do Plano de Compensação de Pagamentos para Agentes,
(iii) regras locais do modo como descritas nas Leis de
45 Agenciamento de Vendas,
(iv) outras resoluções aplicáveis da Associação de Transportes.

(b) Tais leis, resoluções e outros dispositivos que venham
50 a ser anexados aos acima relacionados, deverão ser incorporados a este contrato, e neste constarem a partir de então, e fica acordado que o Agente e o Transportador os cumprirão.

2.2 o Agente reconhece que recebeu uma cópia da edição
55 atual do Guia do Agente de Viagens e está ciente do seu conteúdo. O Agente sobretudo reconhece que leu e compreendeu a matéria contida no referido Guia, que inclui estes e outros assuntos referentes a: pagamento de indenizações e desistência, custódia, emissão e
60 garantia dos Documentos de Tráfego; os procedimentos de

comunicação e remessa de dinheiro; e os procedimentos de arbitragem;

65 2.3 o Administrador da Agência deverá fornecer ao Agente edições atualizadas deste Guia e suas emendas. O Agente deverá ser notificado pelo Administrador da Agência a respeito das emendas que vierem a ser anexadas ao Guia, sendo que estas emendas deverão ser incorporadas a este, a menos que, dentro de 30 dias a partir da data de recebimento desta notificação, o Agente cancele este
70 contrato através de aviso por escrito enviado ao Administrador da Agência;

2.4 os termos e as expressões utilizadas neste contrato, a menos que o contexto assim o torne necessário, terão seus significados respectivamente explicados nas Leis de
75 Agenciamento de Vendas. Em caso de conflito, contradição ou inconsistência entre quaisquer dispositivos que o Agente seja levado a cumprir, contidos no sub-parágrafo 2.1 deste parágrafo, e quaisquer dispositivos deste ste acordo, deverão prevalecer os dispositivos descritos
80 neste contrato.

3. VENDENDO SERVIÇOS DO TRANSPORTADOR

3.1 o Agente está autorizado a vender os serviços de e
85 transporte aéreo de passageiros, da maneira como estes são oferecidos pelo Transportador, ou por outros Transportadores por este autorizados. A venda de transporte aéreo de passageiros significa o empenho em todas as atividades necessárias para fornecer ao
90 passageiro um contrato válido de transporte que inclua, entre outros, a emissão de um Documento de Tráfego e a coleta de pagamento referente a tal documento. O Agente

também está autorizado a vender outros serviços que venham a ser autorizados pelo Transportador;

95 3.2 todos os serviços vendidos de acordo com este
contrato deverão ser negociados em nome do
Transportador, seguindo as tarifas, condições de
transporte e instruções por escrito determinadas pelo
Transportador, da maneira como foram por este fornecidas
100 ao Agente. O Agente não deverá, sob hipótese alguma,
alterar ou modificar os termos e as condições descritas
em qualquer Documento de Tráfego utilizado nos serviços
prestados pelo Transportador, sendo que o Agente deverá
preencher estes documentos da maneira prescrita pelo
105 Transportador;

3.3 o Agente deverá fazer somente tais representações, da
maneira como estas são autorizadas neste contrato e pelo
Transportador.

3.4 com relação a qualquer transporte, o Agente, seus
110 representantes ou empregados poderão buscar os serviços
de outro Transportador Aéreo que não mantenha vínculo
com o Agente, desde que o já referido Agente comprometa-
se a efetuar, direta ou indiretamente, a venda deste
transporte de acordo com os preços, leis e condições
115 aplicáveis à venda do mesmo, do modo como estipulados na
Tarifa deste outro Transportador;

3.5 com relação aos Documentos de Tráfego previamente
emitidos, o Agente, seus representantes ou empregados,
deverão emitir, aceitar, reemitir, validar ou revalidar
120 (inclusive através de adesivos de alteração de reserva)
todos os Documentos de Tráfego que estiverem de acordo
com a Tarifa, condições de transporte e instruções por
escrito do Transportador;

3.6 o Agente deverá comunicar ao Transportador os pedidos
125 específicos ou particulares dos clientes, sempre que

assim for necessário, de modo a permitir que o Transportador possa atender seus clientes com maior eficiência.

130 **4. OBSERVÂNCIA DE LEIS E REGULAMENTOS**

o Agente deverá observar todas as leis e regulamentações governamentais aplicáveis à venda de transporte aéreo, ou a quaisquer outras atividades realizadas pelo Agente de acordo com este contrato, no território ou territórios onde o Agente mantiver escritórios e em todos os territórios aos quais ou através dos quais o Agente possa vender transporte aéreo de passageiros.

140 **5. DENOMINAÇÃO DA AGÊNCIA**

o Agente não poderá intitular-se "Agente Geral" ou utilizar qualquer outro nome tal como "Escritório de Vendas de Passagens Aéreas", o que indicaria ou sugeriria que este escritório é uma das lojas do Transportador ou de qualquer outro membro da Associação de Transportes.

6. CUSTÓDIA E EMISSÃO DE DOCUMENTOS DE TRÁFEGO E CUSTÓDIA DAS PLACAS DE IDENTIFICAÇÃO DO TRANSPORTADOR

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6.1 os Documentos de Tráfego depositados pelo Transportador ou pelo Gerente do Plano de Compensação de Pagamentos em nome do Transportador, são e serão os únicos bens do Transportador ou do Gerente do Plano em poder do Agente, até que devidamente emitidos e entregues conforme a transação contida neste contrato; da mesma maneira, as Placas de Identificação serão os

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únicos bens do Transportador em poder do Agente. O Agente reconhece e concorda que ele não possui nenhum
160 direito de propriedade no que se refere aos Documentos de Tráfego e as Placas de Identificação em seu poder. O Transportador ou Gerente do Plano agindo em nome do Transportador poderá, em qualquer ocasião, requerer que o Agente os devolva imediatamente;

165 6.2 o Transportador ou Gerente do Plano agindo em nome do Transportador, reservar-se-á o direito de, em qualquer ocasião, fazer uma auditoria ou requerer uma auditoria nos Documentos de Tráfego e nas Placas de Identificação, ou certificar-se de que os padrões de segurança estão
170 sendo observados;

6.3 nos locais onde o Transportador participa com um sistema automatizado de bilhetes para a emissão de Documentos de Tráfego Padrão ou Documentos de Tráfego neutros, e o Agente emite estes tipos de Documentos de
175 Tráfego através deste sistema em nome do Transportador, o mesmo poderá, em qualquer ocasião, retirar do Agente a autoridade de emitir Documentos de Tráfego neutros em nome do Transportador. No caso de o Agente ser declarado negligente ou ser suspenso de acordo com as Leis de
180 Agenciamento de Vendas, este não deverá mais emitir Documentos de Tráfego neutros através do já referido sistema em nome do Transportador, a partir da data em que tal suspensão venha a tornar-se efetiva;

185 6.4 nos casos onde qualquer parte do sistema automatizado de bilhetes seja fornecido ao Agente por terceiros, que não seja uma das companhias aéreas que integram este sistema, o Agente compromete-se a obter uma confirmação por escrito do Transportador ou do Coordenador, alegando que as especificações, a função e o modo de operação
190 relevantes de tal sistema, e quaisquer alterações que

neste venham a ocorrer, estão de acordo com os padrões considerados aceitáveis. O Agente não deverá emitir Documentos de Tráfego em nome do Transportador através deste sistema até que esta confirmação por escrito seja obtida.

7. PAGAMENTOS A SEREM REALIZADOS PELO AGENTE AO TRANSPORTADOR -- REMESSA

200 7.1 um Documento de Tráfego deverá ser emitido pelo Agente imediatamente após o recebimento de pagamento referente ao transporte aéreo de passageiro específico ou de serviços afins vendidos de acordo com os termos deste contrato, e o Agente será responsável pela remessa da quantia pagável ao Transportador referente a este Documento de Tráfego;

205 7.2 todos os pagamentos coletados pelo Agente referentes ao transporte e serviços afins, negociados de acordo com os termos deste contrato, inclusive remunerações aplicáveis que o Agente tem o direito de reivindicar, pertencem ao Transportador e devem ser recebidas pelo Agente em confiança ou em nome do Transportador até que a este seja feita uma prestação de contas satisfatória e o acerto ocorra entre as partes;

210 7.3 o Agente não deverá empenhar, ceder, prometer ou transferir a terceiros nenhuma reivindicação de pagamentos devidos ao Agente ou ao Transportador, mas ainda não coletados, referentes ao transporte e serviços afins negociados de acordo com os termos deste contrato, inclusive remunerações aplicáveis que o Agente tenha o direito de reivindicar.

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7.4 no caso de processo falimentar, estado falencial ou
liquidação judicial, ou qualquer processo legal similar
que venha afetar o funcionamento normal das atividades
do Agente, todos os valores devidos ao Transportador ou
que encontrem-se em poder do Agente, mas em nome do
Transportador, referentes a este contrato, -- apesar dos
procedimentos normais de remessa estipulados neste
contrato -- deverão ser pagos imediatamente;

230

8. RESTITUIÇÃO

o Agente deverá efetuar restituição somente de acordo com
as tarifas, condições de transporte e instruções por
escrito do Transportador, e mediante recibo. O Agente só
poderá restituir os Documentos de Tráfego emitidos pelo
próprio.

235

9. REMUNERAÇÃO

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a venda de transporte aéreo e de serviços afins pelo
Agente, de acordo com este contrato, deverá ser remunerada
pelo Transportador, que regularmente comunicará ao Agente
sobre o modo de pagamento e a quantia a ser recebida. Esta
remuneração constituirá uma compensação pelos serviços
prestados ao Transportador.

245

10. REGISTROS CONTÁBEIS E INSPEÇÃO

o Agente deverá manter registros e livros contábeis,
acompanhados de documentação adequada, que contenham os
detalhes de todas as transações efetuadas sob este
contrato. Tais registros, livros contábeis e documentos
deverão ser guardados pelo Agente por pelo menos dois anos

250

255 a contar da data das transações a que estes se referem, e
devem encontrar-se disponíveis para inspeção ou cópia
pelo Transportador cujos Documentos de Tráfego tenham sido
emitidos.

260 **11. SIGILO**

11.1 o Transportador concorda que o Transportador, bem
como os seus representantes, empregados e agentes,
inclusive seus auditores onde aplicável, até onde a Lei
265 os permitirem, considerarão confidenciais as informações
e dados relacionados ao Agente que estes possuírem.

11.2 apesar do sub-parágrafo 11.1 deste parágrafo, o
Agente concorda que o Transportador, seus
representantes, empregados e agentes, inclusive os
270 auditores, onde aplicável, possam colher, processar e
revelar às outras partes participantes do Plano de
Compensação de Pagamentos, exceto a outros Agentes,
informações e dados que os permitam realizar uma
avaliação financeira do Agente ou da administração da
275 agência ou do Plano de Compensação de Pagamentos;

11.3 o Agente concorda que o Agente e seus representantes,
empregados e qualquer outra pessoa agindo em seu nome,
guardará sigilo sobre as informações e dados referentes
ao Transportador que este possuir, até onde a Lei o
280 permitir.

**12 TRANSFERÊNCIA, ADJUDICAÇÃO, ALTERAÇÃO DO SITUAÇÃO
LEGAL, PROPRIEDADE, NOME OU LOCALIZAÇÃO**

285 12.1 este contrato não deverá ser adjudicado ou
transferido, na sua totalidade ou em parte, pelo Agente
a nenhuma outra pessoa ou pessoas;

12.2 no caso de o Agente vir a propor mudança(s) na
situação legal, propriedade, nome(s) e/ou endereço(s) ia
290 (do mesmo modo como estas expressões são utilizadas nas
Leis de Agenciamento de Vendas, que regulam as
atividades de quaisquer Localizações Aprovadas) este
deverá comprometer-se a notificar estas mudanças com
antecedência, de acordo com os procedimentos descritos
295 nestas Leis.

13. RESCISÃO DE CONTRATO

13.1 este contrato ou a aplicação deste a Localização(ões)
300 específica(s) do Agente deverá ser cancelado se,
conforme as Leis de Agenciamento de Vendas:

13.1.1 o Transportador cancelar seu compromisso com o
Agente,

305 13.1.2 o Agente cancelar o seu compromisso com o
Transportador,

13.1.3 o Agente for retirado da Lista de Agenciamento,

13.1.4 o Agente renuncia a sua aprovação/reconhecimento
da Associação de Transportes;

310

13.2 o aviso de rescisão de contrato poderá ocorrer em
qualquer ocasião, através de notificação por escrito. A
menos que as Leis de Agenciamento de Vendas afirmem o
contrário, tal notificação deverá tornar-se efetiva
315 somente a partir do último dia do mês seguinte ao da
notificação de rescisão de contrato, a qual deverá
incluir a data efetiva da rescisão, sem o prejuízo das

partes no que se refere ao cumprimento das obrigações acumuladas anteriormente à data de rescisão do contrato.

320

14. ARBITRAGEM

no caso de qualquer questão vir a ser reexaminada através de arbitragem conforme as leis de Agenciamento de Vendas, o Agente submeter-se-á ao arbítrio de acordo com as já mencionadas Leis, observará os procedimentos aqui descritos e obedecerá a qualquer decisão que venha a ser tomada.

15. INDENIZAÇÕES E ISENÇÃO

15.1 o Transportador concorda em indenizar e isentar o Agente, seus representantes e empregados de qualquer responsabilidade por quaisquer perdas, injúrias ou danos, sejam estes diretos ou indiretos ou conseqüentes, ocorridos no decorrer do transporte ou de serviços afins prestados pelo Transportador conforme venda efetuada pelo Agente, ou originados da não realização dos serviços de transporte ou de serviços afins pelo Transportador, exceto nos casos em que essas perdas, injúrias ou danos sejam causados, na sua totalidade ou em parte, pelo Agente, seus representantes, empregados ou qualquer outra pessoa agindo em nome do Agente;

15.2 o Agente concorda em indenizar e isentar o Transportador, seus representantes e empregados de qualquer responsabilidade por quaisquer perdas, injúrias ou danos, sejam estes diretos ou indiretos ou conseqüentes, causados por negligência ou omissão do Agente, de seus representantes, empregados ou de

350 qualquer outra pessoa agindo em seu nome, ou pela quebra
de contrato pelo Agente em questão, exceto nos casos em
que essas perdas, injúrias ou danos sejam causados, na
sua totalidade ou em parte, pelo Transportador, seus
representantes ou empregados;

355 15.3 nos locais onde o Transportador participar em uma
sistema automatizado de bilhetes para a emissão de
Documentos de Tráfego neutros e o Agente emitir estes
Documentos de Tráfego em nome do Transportador, o Agente
também concorda em indenizar e isentar o Transportador,
360 seus representantes e empregados por todas as perdas,
injúrias ou danos, sejam estes diretos ou indiretos ou
conseqüentes, que resultem do uso negligente ou não
autorizado do sistema ou de qualquer parte deste pelo
Agente, seus representantes, empregados ou empreiteiros
365 (inclusive empreiteiros independentes) ou qualquer outra
pessoa agindo em nome do Agente.

16. AVISOS

370 todos os avisos que devam, de acordo com este contrato,
serem enviados pelo Transportador ou pelo Administrador da
Agência ao Agente, ou pelo Agente ao Transportador ou ao
Administrador da Agência, serão considerados
suficientemente válidos, se mandados por qualquer meio que
375 possa fornecer provas do seu despacho ou recibo endereçado
ao:

- escritório central do Agente,
- escritório central do Transportador, ou

380 ao Administrador da Agência, no endereço mencionado neste
contrato, que poderá ser eventualmente modificado através

de aviso por escrito enviado pelo Administrador da Agência ao Agente.

385 **17. LEI APLICÁVEL**

este contrato deverá ser interpretado e regido em todos os seus aspectos pela Lei da principal praça de negócios do Agente, à exceção dos casos em que estiverem em disputa
390 questões relacionadas unicamente com as atividades de uma filial situada em uma localização diversa da principal praça de negócios do Agente; nestes casos, deverá ser aplicada a Lei do local onde a filial está situada.

395 **18. SEPARAÇÃO**

se qualquer dispositivo deste contrato for considerado inválido, o mesmo não deverá invalidar os outros dispositivos, que deverão permanecer obrigatórios e
400 válidos entre as partes.

19. SUBSTITUINDO OUTROS CONTRATOS

este contrato deverá substituir todo e qualquer Contrato
405 de Agenciamento de Vendas de Passagens entre as partes daqui por diante, no que se refere às Localizações Aprovadas do Agente que não sejam nos EUA, sem o prejuízo de tais direitos e responsabilidade que possam existir a partir desta data.

410

Com a presença de testemunhas as partes interessadas assinaram este contrato na data mencionada no início deste texto

O Diretor Geral da Associação de Transportes atuou como
 415 agente dos Transportadores mencionados no preâmbulo deste
 contrato.

por (Representante Autorizado)
 Agência - Serviços - Área 1 EUA

420 **AGENTE: AGÊNCIA DE VIAGENS LTDA.**

por ----- (Nome, datilografado ou impresso)
 ----- (Título ou Capacidade Legal)

425 Assinatura -----

Endereço Completo BRASIL

Favor indicar abaixo caso o endereço não esteja correto

430 Nota: Quando a Lei local assim fizer necessário, tais
 formalidades deverão ser cumpridas: a assinatura deste
 contrato deverá ser realizada na presença de testemunhas,
 ou deverá ocorrer o reconhecimento de firmas. O espaço
 abaixo poderá ser utilizado para tal fim.

435

TESTEMUNHA

----- (Nome datilografado ou impresso)

----- (Título ou Capacidade Legal)

Assinatura -----

440

APPENDIX 7

TRANSLATION TEXT NO. 2.2

CONTRATO DE AGENCIAMENTO DE VENDAS A PASSAGEIROS.

CONTRATO, celebrado aos 15 dias de dezembro de 1993, entre AGÊNCIA DE VIAGENS LTDA., sediada em xxx, Brasil, (doravante no presente o "Agente") e cada Membro da TA (doravante no presente a "Transportadora") que nomeie o Agente, representado pelo Diretor Geral da TA, agindo em nome e em lugar desse Membro da TA, MEDIANTE O QUAL FICA ACORDADO O SEGUINTE:

10 **1. VIGÊNCIA** - Este Contrato entrará em vigor entre o Agente e a Transportadora imediatamente após a nomeação do Agente por essa Transportadora, de acordo com as Normas para Agencias de Vendas vigentes no(s) país(es) onde haja Instalações do Agente. Ao entrar em vigor, este
15 Contrato, inclusive quaisquer alterações ao mesmo, terá o mesmo vigor e o mesmo efeito, entre a Transportadora e o Agente, como se ambos fossem nomeados no presente e houvessem firmado seus nomes ao mesmo.

2. NORMAS, RESOLUÇÕES E ESTIPULAÇÕES INCORPORADAS AO O
20 **CONTRATO**

2.1 (a) Os termos e condições que regem as relações s entre a Transportadora e o Agente estão dispostos nas Resoluções (e em outras determinações extraídas das mesmas) contidas no "Manual do Agente de Viagens" (o
25 "Manual") periodicamente publicado por ordem do Administrador de Agências e anexado a este Contrato. O Manual inclui: (i) as Normas para Agências de Vendas; (ii) as normas do Plano de Liquidação, quando aplicáveis,

como dispostas no Manual SP para Agentes; (iii) os
30 regulamentos locais estipulados de acordo com as Normas
para Agências de Vendas; (iv) outras Resoluções da TA
aplicáveis.

(b) Tais Normas, Resoluções e outras estipulações,
conforme alteradas de tempos em tempos, são
35 consideradas incorporadas a este Contrato e passam a ser
parte integrante do presente e, a Transportadora e o
Agente concordam em cumpri-las.

2.2 O Agente reconhece haver recebido um exemplar da
edição corrente do Manual e haver tomado conhecimento
40 do seu conteúdo. O Agente reconhece especificamente haver
lido e compreendido o teor do Manual, inclusive, mas sem
a isso limitar-se, os textos referentes a: indenidades
e renúncia; custódia; emissão e segurança de Documentos
de Tráfego; os procedimentos para prestação de contas e
45 remessas; e os procedimentos de arbitragem.

2.3 O Administrador de Agências fornecerá ao Agente as
edições subseqüentes do Manual e todas as alterações ao
mesmo. O Agente será avisado pelo Administrador de
Agências de todas as alterações ao texto do Manual e essas
50 alterações serão consideradas incorporadas ao presente, a
menos que, dentro dos 30 dias seguintes ao recebimento
desse aviso, o Agente rescinda este Contrato mediante
aviso escrito ao Administrador de Agências.

2.4 Os termos e expressões empregados neste Contrato,
55 terão os significados respectivamente estipulados nas
Normas para Agências de Vendas, a menos que o contexto
exija o contrário. Na eventualidade de qualquer conflito,
contradição ou inconsistência, entre quaisquer
estipulações que o Agente deva cumprir de acordo com o
60 Subparágrafo 2.1 deste Parágrafo, e qualquer disposição

deste Contrato, as disposições deste Contrato prevalecerão.

3. VENDA DOS SERVIÇOS DA TRANSPORTADORA

65 3.1 O Agente está autorizado a vender transporte aéreo de passageiros pela Transportadora e por outras transportadoras, como autorizado pela Transportadora. A venda de transporte aéreo de passageiros envolve todas as atividades necessárias para fornecer ao passageiro um contrato de transporte válido, inclusive, sem porém a 70 isso limitar-se, a emissão de um Documento de Tráfego válido e a cobrança do preço do mesmo. O Agente também poderá vender serviços correlatos e outros serviços, se a Transportadora o autorizar.

75 3.2 Todos os serviços vendidos de acordo com este Contrato serão vendidos em nome da Transportadora e em conformidade com tarifas, condições de transporte e instruções escritas da Transportadora, fornecidas ao Agente. O Agente não irá, de modo algum, alterar ou modificar os termos e condições escritos em qualquer 80 Documento de Tráfego usado com relação aos serviços prestados pela Transportadora e o Agente preencherá esses documentos como prescrito pela Transportadora.

3.3 O Agente só fará as declarações autorizadas neste Contrato e pela Transportadora.

85 3.4 Com relação a qualquer transporte que o Agente, seus executivos ou prepostos possam obter junto a outra transportadora aérea que não tenha dado poderes ao Agente, o Agente promete que só tentará, direta ou indiretamente, vender esse transporte estritamente de 90 acordo com as tarifa, as normas e as condições aplicáveis à venda desse transporte, publicadas na tabela de tarifas dessa outra transportadora.

3.5 Com relação a Documentos de Tráfego emitidos anteriormente, o Agente, seus executivos ou prepostos, emitirão, aceitarão, reemitirão, validarão ou revalidarão (inclusive através de etiquetas adesivas de alteração de reserva) todos esses Documentos de Tráfego, de acordo com tarifas, condições de transporte e instruções escritas da Transportadora.

3.6 O Agente transmitirá à Transportadora os detalhes ou solicitações específicos, relativos a cada cliente, necessários para que a Transportadora possa atender a cada cliente com eficiência.

4. OBSERVÂNCIA DE LEIS E REGULAMENTOS - O Agente observará todas as leis e regulamentos aplicáveis à venda de transporte aéreo ou quaisquer outras atividades exercidas pelo Agente de acordo com este Contrato no(s) território(s) em que as Instalações Aprovadas do Agente estejam situadas e em todos os territórios nos quais ou através dos quais o Agente venda transporte aéreo de passageiros.

5 . DENOMINAÇÃO DO AGENTE - O Agente não se apresentará como um "Agente Geral" , nem fará uso de qualquer outra designação, como por exemplo, "Ponto de Venda de Passagens Aéreas", que possa indicar ou dar a entender, de qualquer maneira, que seu escritório é um escritório da Transportadora ou de qualquer Membro.

6. CUSTÓDIA E EMISSÃO DE DOCUMENTOS DE TRÁFEGO E CUSTÓDIA DE PLACAS DE IDENTIFICAÇÃO DA TRANSPORTADORA

6.1 Documentos de Tráfego depositados pela Transportadora ou pela Administração do Plano de Liquidação em nome da Transportadora, conforme o caso, são e continuarão sendo propriedade exclusiva da Transportadora ou da Administração do Plano de Liquidação, até serem

125 devidamente emitidos e entregues em conformidade com uma
operação realizada de acordo com este Contrato; da
mesma maneira, Placas de Identificação depositadas com
o Agente serão sempre propriedade exclusiva da
Transportadora. O Agente reconhece e concorda não ter
130 direito de propriedade sobre tais Documentos de Tráfego e
Placas. A Transportadora, ou a Administração do Plano
agindo em nome da mesma, poderá exigir em qualquer
ocasião que o Agente devolva tais Documentos de Tráfego e
Placas de Identificação e o Agente concorda em devolvê-los
135 imediatamente.

6.2 A Transportadora, ou a Administração do Plano agindo
em nome da mesma, terá, em qualquer ocasião, direito
de fazer uma auditoria ou providenciar a auditoria de
Documentos de Tráfego e Placas de Identificação ou de
140 verificar se os padrões de segurança estão sendo
atendidos.

6.3 No caso de a Transportadora participar de um sistema
automatizado de emissão de bilhetes, para emissão de
Documentos de Tráfego Padronizados ou outros Documentos de
145 Tráfego neutros, e o Agente emitir Documentos de Tráfego
através desse sistema, em nome da Transportadora, a
Transportadora poderá, em qualquer ocasião, tirar do
Agente a autoridade para emitir Documentos de Tráfego
neutros em nome da mesma. Na eventualidade de ser
150 declarada uma inadimplência do Agente ou o Agente ser
suspense de acordo com as Normas para Agência de Vendas,
o Agente interromperá imediatamente a sua emissão de
Documentos de Tráfego neutros através do sistema, em
nome da Transportadora, a partir da data de entrada em
155 vigor dessa inadimplência ou suspensão.

6.4 Se qualquer parte de um sistema automatizado de

emissão de bilhetes for fornecida ao Agente por terceiro que não seja uma companhia aérea participante desse sistema, o Agente compromete-se a obter confirmação escrita, da Transportadora ou do Coordenador, de que as pertinentes especificações, funções e forma de operação desse sistema e quaisquer alterações ao mesmo, estão conformes com padrões aceitáveis. O Agente só emitirá Documentos de Tráfego em nome da Transportadora através do sistema uma vez essa confirmação tenha sido obtida.

7. SOMAS DEVIDAS A TRANSPORTADORAS PELO AGENTE - REMESSA

7.1 Um Documento de Tráfego será emitido imediatamente após ser recebida pelo Agente uma soma relativa ao pertinente transporte aéreo de passageiro ou aos serviços correlatos vendidos de acordo com este Contrato e o Agente será responsável pela remessa à Transportadora do valor a ser pago com relação a esse Documento de Tráfego.

7.2 Todas as somas cobradas pelo Agente por transporte e serviços correlatos vendidos de acordo com este Contrato, inclusive a remuneração adequada que o Agente tenha direito de reivindicar de acordo com os mesmos, são propriedade da Transportadora e devem ser detidas pelo Agente sob fideicomisso em favor da Transportadora ou em nome da Transportadora até prestação de contas satisfatória à Transportadora e sua quitação.

7.3 O Agente não penhorará, cederá, prometerá ou transferirá a terceiros de outra maneira, quaisquer direitos a quantias devidas ao Agente ou à Transportadora mas ainda não cobradas, por transporte e serviços correlatos vendidos em conformidade com este Contrato, inclusive remuneração aplicável que o Agente tenha direito de reivindicar de acordo com o presente.

190 7.4 Caso o Agente venha a ser objeto de processo de de
falência ou seja submetido a uma sindicatura ou
administração judicial, entre em liquidação, ou seja
submetido a processo judicial semelhante que afete sua
operação normal, então, não obstante os procedimentos
normais de remessa descritos neste Contrato, todas as
195 somas devidas à Transportadora, ou detidas em nome da
Transportadora em conexão com este Contrato, estarão
imediatamente vencidas para pagamento.

200 **8. REEMBOLSO** - O Agente só fará reembolso de acordo com as
tarifas, condições de transporte e instruções escritas
da Transportadora e, contra recibo. O Agente só
reembolsará Documentos de Tráfego emitidos pelo mesmo.

205 **9. REMUNERAÇÃO** - A Transportadora remunerará o Agente
pela venda de transporte aéreo e serviços correlatos
efetuada pelo mesmo de acordo com este Contrato, na
forma e nos montantes declarados de tempos em tempos e
comunicados à Transportadora pelo Agente. Essa
remuneração constituirá compensação integral pelos
serviços prestados à Transportadora.

210 **10. REGISTROS E INSPEÇÃO** - O Agente manterá contas e
registros adequados, juntamente com documentos
comprobatórios, mostrando os detalhes de todas as
operações realizada em conformidade com este Contrato.
Tais registros, contas e documentos serão preservados
pelo Agente durante pelo menos dois anos, contados da
215 data da operação a que se refiram e estarão disponíveis
para inspeção ou para sua cópia pela Transportadora
cujos Documentos de Tráfego tenham sido emitidos.

11. CONFIDENCIALIDADE

220 **11.1** A Transportadora convencionou que a Transportadora, a,
seus executivos, prepostos e representantes, inclusive a

Administração do Plano de Liquidação, quando aplicável, darão tratamento confidencial a informações e dados referentes ao Agente que cheguem a ela como confidenciais, exceto na medida em que sua divulgação seja exigida por lei.

225 11.2 Não obstante o Subparágrafo 11.1 deste Parágrafo, o Agente acorda que a Transportadora, seus executivos, prepostos e representantes, inclusive a Administração do Plano de Liquidação, quando aplicável, poderão
230 coletar, processar e divulgar a terceiros que participem do Plano de Liquidação, mas não a outros Agentes, tais informações e dados para fins de avaliação financeira do Agente ou de operação ordenada de administração de agências ou do Plano de Liquidação.

235 11.3 O Agente convencionou que o Agente, seus executivos, prepostos e qualquer outra pessoa que aja em nome do Agente, darão tratamento confidencial a informações e dados referentes à Transportadora que cheguem a ela como confidenciais, exceto na medida em que sua
240 divulgação seja exigida por lei.

12. TRANSFERÊNCIA, CESSÃO, MUDANÇA DA CAPACIDADE LEGAL, PROPRIEDADE, DENOMINAÇÃO OU LOCALIZAÇÃO

245 12.1 Este Contrato não será cedido ou transferido de outro modo pelo Agente, no seu todo ou em parte, a qualquer pessoa ou quaisquer pessoas.

250 12.2 O Agente promete que, caso tencione fazer qualquer modificação em sua capacidade legal, propriedade, denominação ou razão social e/ou seu(s) endereço(s) (de acordo com o significado atribuído a essas expressões nas Normas para Agências de Vendas, de acordo com as quais sejam conduzidas as atividades de qualquer das suas Instalações Aprovadas) o Agente dará

aviso prévio em conformidade com os procedimentos detalhados nessas Normas.

255 **13. RESCISÃO**

13.1 Este Contrato, ou a sua aplicação a uma ou mais Instalações do Agente, será rescindido(a) se, segundo as Normas para Agências de Vendas:

13.1.1 A Transportadora retirar seu mandato ao Agente,

260 **13.1.2** O Agente desistir do mandato outorgado pela Transportadora,

13.1.3 O Agente for removido da Lista de Agências,

13.1.4 O Agente desistir de sua Habilitação/Aprovação pela TA;

265 **13.2** Notificação de rescisão do Contrato por uma das razões acima poderá ser dada a qualquer tempo mediante aviso escrito. Salvo especificação em contrário nas Normas para Agências de Vendas, essa notificação só entrará em vigor no último dia do mês seguinte ao mês em que o
270 aviso de rescisão seja dado, sendo que esse aviso deverá incluir a data de entrada em vigor da rescisão, sem prejuízo do cumprimento, por cada parte, de todas as obrigações acumuladas até a data de rescisão.

14. ARBITRAGEM - Caso qualquer questão seja submetida da
275 a arbitragem de acordo com as Normas para Agências de Vendas, o Agente se submeterá à arbitragem em conformidade com tais Normas e pelo presente consente em observar os procedimentos estipulados pela arbitragem e cumprir qualquer laudo arbitral emitido.

280 **15. INDENIDADES E RENÚNCIA**

15.1 A Transportadora acorda indenizar e resguardar o Agente, assim como os executivos e prepostos do mesmo da responsabilidade por quaisquer perdas, danos pessoais ou prejuízos, diretos, indiretos ou consequentes, ocorridos

285 durante o transporte ou outros serviços correlatos
prestados pela Transportadora em seguimento a uma venda
efetuada pelo Agente de acordo com o presente ou em
consequência do fato de a Transportadora não fornecer o
transporte ou esses serviços, exceto na medida em que
290 tais perdas, danos pessoais ou prejuízos sejam causados
ou agravados pelo Agente ou por seus executivos e
prepostos, ou qualquer pessoa que aja em nome do Agente.

15.2 O Agente acorda indenizar e resguardar a
Transportadora, os executivos e prepostos da mesma da
295 responsabilidade por quaisquer perdas, danos pessoais ou
prejuízos, diretos, indiretos ou consequentes, oriundos de
qualquer negligência ou omissão do Agente, de seus
executivos ou prepostos ou, de qualquer outra pessoa que
aja em nome do Agente ou de qualquer infração deste
300 Contrato por parte do Agente, exceto na medida em que
tais perdas, danos pessoais ou prejuízos sejam
provocados ou agravados pela Transportadora, por
executivos ou prepostos da mesma.

15.3 No caso de a Transportadora participar de um sistema
305 automatizado de emissão de bilhetes, para a elaboração de
Documentos de Tráfego neutros, e o Agente emitir tais
Documentos de Tráfego através do sistema em nome da
Transportadora, o Agente convencionou também que indenizará
e resguardará a Transportadora, os executivos e prepostos
310 da mesma, de quaisquer perdas, danos pessoais ou
prejuízos, diretos, indiretos ou consequentes, resultantes
de uso negligente ou não autorizado do sistema ou de
qualquer parte dele, pelo Agente, por seus executivos,
prepostos ou contratados (inclusive prestadores de
315 serviços autônomos) ou qualquer outra pessoa que aja em
nome do Agente.

16. **AVISOS** - Todos os avisos a serem enviados, de acordo com este Contrato, pela Transportadora ou pelo Administrador de Agências, para o Agente, ou pelo Agente, para a Transportadora ou para o Administrador de Agências, será aviso suficiente se enviado por qualquer meio que forneça prova do despacho ou recebimento, e endereçado, conforme o caso, para: - o escritório principal do Agente, o escritório principal da Transportadora ou - para o Administrador de Agências, no endereço apresentado neste Contrato, endereço esse que poderá ser mudado através de aviso escrito, de tempos em tempos, do Administrador de Agências para o Agente.

17. **LEI APLICÁVEL** - Este Contrato será, sob todos os aspectos, regido pelas leis do foro onde esteja o principal escritório do Agente e, interpretado de acordo com tais leis, com a exceção porém que, no caso de qualquer disputa surgida unicamente com relação às atividades de uma filial situada em lugar diferente daquele onde esteja localizado o escritório principal do Agente, aplicar-se-á a lei do foro onde esteja instalada tal filial.

18. **SEPARABILIDADE** - Caso qualquer estipulação deste Contrato seja considerada inválida, isto não invalidará suas outras disposições que continuarão vinculatórias e vigentes entre as partes.

19. **OUTROS ACORDOS SUBSTITUÍDOS** - Este Contrato substituirá e prevalecerá sobre todos e quaisquer Contratos de Agenciamento de Vendas a Passageiros anteriormente existentes entre as partes do presente com relação às Instalações do Agente Aprovadas, localizadas fora dos E.U.A. sem prejuízo de direitos e

obrigações existentes na presente data.

350 EM TESTEMUNHO DO QUE, as partes contratantes firmaram este Contrato com validade na data primeiramente escrita acima.

Pelo Diretor Geral da "TRANSPORT ASSOCIATION", agindo como representante das Transportadoras mencionadas no
355 preâmbulo do presente, _____ (Representante Autorizado) , Director, Agency Services Area 1.

Pelo AGENTE : AGÊNCIA DE VIAGENS LTDA . _____
Brasil.

Nota: Se as leis locais exigirem testemunhas da assinatura
360 do Contrato ou reconhecimento notarial das assinaturas, essas formalidades deverão ser cumpridas. O espaço abaixo poderá ser utilizado para esse fim.

APPENDIX 8

TRANSLATION TEXT NO. 2.3

CONTRATO PARA VENDA DE PASSAGENS

Contrato celebrado aos 15 de dezembro de 1993 entre
AGÊNCIA DE VIAGENS LTDA., com sua matriz localizada na
5 xxx, Brasil, (doravante denominada "Agente") e cada Membro
da TA ["Transport Association"] (doravante denominado
"Transportador") que nomeie o Agente, representado pelo
Diretor Geral da TA, o qual atua em nome de tal Membro da
TA.

10 POR MEIO DO PRESENTE FICA CONTRATADO O SEGUINTE:

1. VALIDADE

Este Contrato entrará em vigor entre o Agente e o
Transportador com a nomeação do Agente por tal
15 Transportador, de acordo com o Regulamento para Venda de
Passagens em vigor no(s) país(es) em que o Agente tiver
seu(s) endereço(s). Ao entrar em vigor, este Contrato,
inclusive qualquer aditamento ao mesmo terá o mesmo poder
e eficácia entre o Transportador e o Agente como teria se
20 ambos fossem nomeados neste documento e tivessem assinado
seus nomes como partes do presente.

2. REGULAMENTOS, RESOLUÇÕES E DISPOSITIVOS INCLUÍDOS NO CONTRATO

25 2.1. (a) Os termos e condições que regem as relações entre
o Transportador e o Agente se encontram estabelecidos nas
Resoluções (e outros dispositivos delas originados)
contidas no "Travel Agent's Handbook" [Manual do Agente de

Viagens] ("the Handbook" - O Manual), conforme publicado
30 periodicamente segundo determinação do Administrador de
Agências e anexo a este Contrato. O Manual inclui:

(i) o Regulamento para Venda de Passagens;
(ii) os regulamentos sobre o Plano de Quitação, onde
aplicáveis, conforme estabelecidos no Manual PQ para
35 Agentes;

(iii) as normas locais, conforme possam ser fornecidas,
relativas ao Regulamento para Venda de Passagens;

(iv) outras Resoluções da TA aplicáveis.

(b) Os Regulamentos, Resoluções e outros dispositivos,
40 conforme aditados periodicamente, são considerados
incorporados a este Contrato e parte dele constituinte,
sendo que o Agente e o Transportador concordam em cumprí-
los.

2.2 O Agente reconhece que recebeu uma cópia da edição
45 atualizada do Manual e que tomou conhecimento de seu
conteúdo. O Agente reconhece em especial que leu e que
compreende o conteúdo do Manual, incluindo porém não se
limitando aos itens que tratam de: indenizações e renúncia
de direitos; custódia, emissão e segurança de Documentos
50 de Tráfego; procedimentos de relato e remessa e
procedimentos de arbitragem.

2.3 O Administrador de Agências fornecerá ao Agente
edições subsequentes do Manual e todos os aditamentos ao
mesmo. O Agente será notificado pelo Administrador de
55 Agências acerca de quaisquer aditamentos ao conteúdo do
Manual e tais aditamentos serão considerados como
incorporados ao presente, salvo se, num prazo de 30 dias
do recebimento de tal notificação, o Agente rescindir este
Contrato por notificação por escrito ao Administrador de
60 Agências.

2.4 Os termos e expressões utilizados neste Contrato,

salvo se o contexto exigir de forma diversa, terão os significados respectivamente previstos no Regulamento para Venda de Passagens. No caso de qualquer conflito, 65
contradição ou discrepância entre quaisquer dispositivos que o Agente deva cumprir de acordo com o item 2.1 desta Cláusula e quaisquer das Cláusulas deste Contrato, as Cláusulas deste Contrato prevalecerão.

70 **3. COMERCIALIZAÇÃO DOS SERVIÇOS DO TRANSPORTADOR**

3.1 O Agente está autorizado a comercializar passagens aéreas do Transportador e de outros transportadores aéreos, conforme autorizado pelo Transportador. A comercialização de passagens abrange todas as atividades 75
necessárias para fornecer ao passageiro um contrato de transporte válido, incluindo porém não se limitando à emissão de um Documento de Tráfego válido e à cobrança de quantias para tal fim. O Agente está também autorizado a vender os serviços auxiliares e outros serviços, conforme 80
o Transportador venha a autorizar.

3.2 Todos os serviços comercializados de acordo com este Contrato serão comercializados em nome do Transportador e de acordo com as tarifas deste, suas condições para transporte e suas instruções por escrito, conforme 85
fornecido ao Agente. O Agente não alterará ou modificará de qualquer forma os termos e condições estabelecidos em qualquer Documento de Tráfego usado para os serviços fornecidos pelo Transportador e o Agente preencherá este documento da maneira determinada pelo Transportador;

90 3.3 O Agente realizará as representações apenas conforme autorizadas pelo Transportador neste Contrato;

3.4 Em relação a qualquer serviço de transporte que o Agente, seus gerentes ou empregados possam obter junto a outro transportador aéreo que não tenha nomeado o Agente,

95 este compromete-se a não obter, direta ou indiretamente, a
venda de tal serviço de outra forma senão estritamente de
acordo com as tarifas, regulamentos e condições aplicáveis
à comercialização de tal serviço, conforme publicado nas
tabelas de tarifas daquele outro transportador;

100 3.5 Em relação aos Documentos de Tráfego anteriormente
emitidos, o Agente, seus gerentes ou empregados emitirão,
aceitarão, re-emitirão, validarão ou revalidarão
(inclusive através de etiquetas adesivas para alteração de
reservas) todos aqueles Documentos de Tráfego, de acordo
105 com as tarifas do Transportador, suas condições de
transporte e instruções escritas;

3.6 O Agente comunicará ao Transportador todos os pedidos os
ou informações específicas relacionadas à cada cliente
conforme possa ser necessário para permitir ao
110 Transportador o atendimento eficiente à cada cliente.

4. CUMPRIMENTO DE LEIS E REGULAMENTOS

O Agente cumprirá todas as leis e regulamentos
governamentais aplicáveis à comercialização de passagens
115 aéreas ou quaisquer outros atos realizados pelo Agente
neste Contrato, no(s) território(s) onde os Endereços
Autorizados do Agente estão situados e em todos os
territórios para os quais e através dos quais o Agente
possa vender passagens aéreas.

120

5. DENOMINAÇÃO DA AGÊNCIA

O Agente não se intitulará um "Agente Geral" nem utilizará
qualquer outra denominação como "Agência de Passagens
Aéreas", o que poderia de qualquer forma indicar ou
125 sugerir que sua agência é uma agência do Transportador ou
de qualquer Membro.

6. CUSTÓDIA E EMISSÃO DE DOCUMENTOS DE TRÁFEGO E CUSTÓDIA DE PLACAS DE IDENTIFICAÇÃO DO TRANSPORTADOR

130 6.1 Os Documentos de Tráfego depositados pelo
Transportador ou pela Direção do Plano de Quitação em
nome do Transportador, conforme o caso, são e continuam
propriedades exclusivas do Transportador ou da Direção do
Plano até que devidamente emitidos ou entregues de acordo
135 com a negociação realizada sob este Contrato; da mesma
forma, as Placas de Identificação confiadas ao Agente são
sempre propriedades exclusivas do Transportador. O Agente
reconhece e concorda que não tem qualquer direito de
propriedade sobre tais Documentos de Tráfego e Placas. O
140 Transportador ou a Direção do Plano que atue em seu nome
pode, a qualquer momento, exigir que o Agente devolva tais
Documentos de Tráfego e Placas de Identificação e o Agente
concorda em devolvê-los imediatamente;

6.2 O Transportador ou a Direção do Plano que atue em seu
145 nome terá o direito de em qualquer momento realizar ou
obter uma auditoria em Documentos de Tráfego e Placas de
Identificação, ou de certificar-se de que os padrões de
segurança estejam sendo atendidos;

6.3 Nos locais em que o Transportador participe de um
150 sistema automatizado de passagens para emissão de
Documentos de Tráfego Padrão ou outros Documentos de
Tráfego neutros e o Agente emita tais Documentos de
Tráfego através do sistema em nome do Transportador, este
pode, a qualquer momento, retirar do Agente a autorização
155 para emitir Documentos de Tráfego neutros em seu nome. No
caso de o Agente ser declarado inadimplente ou ser
suspense de acordo com o Regulamento para Venda de
Passagens, o Agente imediatamente deixará de emitir
Documentos de Tráfego neutros através do sistema, em nome
160 do Transportador, a partir da data em que tal

inadimplência ou suspensão entrar em vigor;

165 6.4 No caso de qualquer parte de um sistema automatizado .do
de passagens ser fornecida ao Agente por um terceiro que
não seja uma companhia aérea participante de tal sistema,
o Agente se compromete a obter confirmação por escrito do
Transportador ou do Coordenador, no sentido de que as
170 especificações, função e modo de operação essenciais de
tal sistema e quaisquer modificações ao mesmo estejam de
acordo com padrões que sejam aceitáveis. O Agente não
emitirá Documentos de Tráfego em nome do Transportador até
que tal confirmação por escrito seja obtida.

7. VALORES DEVIDOS PELO AGENTE AO TRANSPORTADOR - REMESSA

175 7.1 Um Documento de Tráfego será emitido imediatamente te
após o valor ser recebido pelo Agente por passagens aéreas
especificadas ou serviços auxiliares comercializados sob
este Contrato e o Agente será responsável pela remessa ao
Transportador do valor devido relativamente à tal
Documento de Tráfego;

180 7.2 Todos os valores cobrados pelo Agente por passagens
aéreas ou serviços auxiliares comercializados sob este
Contrato, inclusive a remuneração pertinente que o Agente
tem o direito de reivindicar pelos mesmos, são de
propriedade do Transportador e devem ser confiados à
185 guarda do Agente para o Transportador ou em seu nome, até
que sejam prestadas contas satisfatoriamente junto ao
Transportador e que o pagamento seja realizado;

190 7.3 O Agente não penhorará, cederá, prometerá ou de outra :ra
forma transferirá a terceiro quaisquer direitos relativos
a valores devidos ao Agente ou ao Transportador, porém
ainda não cobrados, por passagens aéreas e serviços
auxiliares comercializados sob este Contrato, inclusive a
remuneração pertinente, os quais o Agente tem o direito de

reivindicar, de acordo com este Contrato;

195 7.4 No caso de o Agente se tornar objeto de processo
falimentar, sofrer sindicatura ou administração judicial,
entrar em liquidação ou se tornar objeto de procedimento
legal semelhante que afete a atuação normal do Agente,
200 todos os valores devidos ao Transportador ou guardados em
seu nome relativos a este contrato tornar-se-ão
imediatamente devidos, não obstante os procedimentos
normais de remessa neste Contrato.

8. RESTITUIÇÕES

205 O Agente fará restituições apenas de acordo com as
tarifas, condições de transporte e instruções por escrito
do Transportador e contra recibo. O Agente só restituirá
Documentos de Tráfego emitidos por si próprio.

9. REMUNERAÇÃO

210 Pela comercialização de passagens aéreas e serviços
auxiliares pelo Agente sob este Contrato, o Transportador
remunerará o Agente do modo e no valor que venha a ser
declarado periodicamente e comunicado ao Agente pelo
215 Transportador. Esta remuneração constituirá compensação
total pelos serviços prestados ao Transportador.

10. REGISTROS E INSPEÇÃO

220 O Agente manterá registros e contas suficientes,
juntamente com documentos comprobatórios, relativos aos
detalhes de todas as negociações realizadas sob este
Contrato. Tais registros, contas e documentos serão
mantidos pelo Agente por pelo menos dois anos, a partir da
data das negociações às quais eles se referem e estarão
225 disponíveis para inspeção ou cópia pelo Transportador

cujos Documentos de Tráfego foram emitidos.

11. SIGILO

230 11.1 O Transportador concorda que ele próprio e seus gerentes, empregados e agentes, inclusive a Diretoria do Plano de Quitação, nos casos aplicáveis, tratarão como confidenciais as informações e dados que venham a receber relativos ao Agente, com exceção dos limites impostos pela lei;

235 11.2 Não obstante o item 11.1 desta Cláusula, o Agente concorda que o Transportador, seus gerentes, empregados e agentes, inclusive a Diretoria do Plano de Quitação, nos casos aplicáveis, possam coletar, processar ou revelar informações e dados a terceiros participantes do PQ, com exceção de a outros agentes, com o propósito de avaliação financeira do Agente ou de operação ordenada de administração de agência ou do Plano de Quitação;

240 11.3 O Agente concorda que ele próprio e seus gerentes, empregados e qualquer outra pessoa que aja em seu nome
245 tratarão como confidenciais as informações e dados relativos ao Transportador que venham a receber, com exceção dos limites impostos pela lei.

12. TRANSFERÊNCIA, CESSÃO, MUDANÇA DE ESTADO LEGAL, PROPRIEDADE, NOME OU ENDEREÇO

250 12.1 Este Contrato não será cedido ou de outra forma transferido pelo Agente, no todo ou em parte, a qualquer outra pessoa(s);

255 12.2 No caso do Agente propor qualquer alteração ou alterações no estado legal, propriedade, denominação(s) e/ou endereço(s) (de acordo com o significado abrangido por estas expressões, conforme utilizadas no Regulamento

para Venda de Passagens sob o qual as atividades de qualquer de seus Endereços Autorizados são realizadas), o
260 Agente se compromete a notificar previamente, de acordo com os procedimentos específicos estabelecidos naquele Regulamento.

13. RESCISÃO

265 13.1 Este Contrato, ou sua aplicação a um Endereço específico do Agente, será rescindido se, de acordo com o Regulamento para Venda de Passagens:

13.1.1 o Transportador retira sua nomeação do Agente;

13.1.2 o Agente se retira de sua nomeação pelo
270 Transportador;

13.1.3 o Agente é retirado da "Agency List" (Relação de Agências);

13.1.4 o Agente renuncia à sua Aprovação/Credenciamento junto à TA.

275 13.2 A notificação de rescisão do Contrato, conforme acima, pode ser realizada a qualquer momento por notificação por escrito. Salvo se especificado de forma diversa no Regulamento para Venda de Passagens, esta notificação entrará em vigor a partir do último dia do mês
280 seguinte ao mês em que a notificação de rescisão for feita e tal notificação incluirá a data efetiva da rescisão, sem prejuízo do cumprimento, por cada parte, de todas as obrigações incorridas anteriormente à data da rescisão.

285 14. ARBITRAGEM

Caso qualquer assunto seja re-examinado por arbitragem, de acordo com o Regulamento para Venda de Passagens, o Agente pelo presente se submete à arbitragem de acordo com tal Regulamento e concorda em cumprir os procedimentos nele
290 determinados e submeter-se a qualquer laudo arbitral dele

resultante.

15. INDENIZAÇÕES E RENÚNCIA DE DIREITOS

295 15.1 O Transportador concorda em indenizar e isentar o
Agente, seus gerentes e empregados, de responsabilidade
por qualquer prejuízo, perda ou dano direto, indireto ou
conseqüente, proveniente do transporte ou outros serviços
auxiliares fornecidos pelo Transportador mediante
300 comercialização realizada por este Agente ou proveniente
da deficiência do Transportador em fornecer tal transporte
ou serviços, exceto na medida em que tal prejuízo, perda
ou dano seja causado ou tenha a contribuição do Agente,
seus gerentes, empregados ou qualquer outra pessoa que
atue em seu nome;

305 15.2 O Agente concorda em indenizar e isentar o
Transportador, seus gerentes e empregados, de
responsabilidade por qualquer prejuízo, perda ou dano
direto, indireto ou conseqüente, proveniente de qualquer
ato de negligência ou omissão do Agente, seus gerentes,
310 empregados ou qualquer outra pessoa que atue em seu nome
ou proveniente de qualquer violação deste Contrato pelo
Agente, exceto na medida em que tal prejuízo, perda ou
dano seja causado ou tenha a contribuição do
Transportador, seus gerentes ou empregados;

315 15.3 Nos locais em que o Transportador participe de um
sistema automatizado de passagens para emissão de
Documentos de Tráfego Neutros e o Agente emita tais
Documentos de Tráfego através do sistema em nome do
Transportador, o Agente também concorda em indenizar e
320 isentar o Transportador, seus gerentes e empregados de
todos os prejuízos, perdas ou danos diretos, indiretos ou
conseqüentes, provenientes do uso negligente ou não
autorizado do sistema ou de qualquer parte do mesmo pelo

Agente, seus gerentes, empregados ou contratados
325 (inclusive autônomos) ou qualquer outra pessoa que atue em
nome do Agente.

16. NOTIFICAÇÕES

Todas as notificações a serem enviadas sob este Contrato
330 pelo Transportador ou pelo Administrador de Agências ao
Agente, ou pelo Agente ao Transportador ou ao
Administrador de Agências serão válidas caso enviadas por
qualquer meio que forneça comprovação de envio ou
recebimento, conforme adequado, e endereçadas para:

335 - a matriz do Agente,
- a matriz do Transportador, ou
ao Administrador de Agências no endereço constante neste
Contrato, endereço este que pode ser modificado por
notificação periódica por escrito, pelo Administrador de
340 Agências ao Agente.

17. LEGISLAÇÃO APLICÁVEL

Este Contrato será interpretado e regido em todos os seus
aspectos pelas leis do local principal de atividade do
345 Agente, exceto com relação a qualquer litígio que se
origine exclusivamente em virtude da atividade de uma
filial situada em local diverso do local principal de
atividade do Agente, caso em que as leis do local onde a
filial está situada serão aplicadas.

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18. DIVISIBILIDADE

Caso qualquer Cláusula deste Contrato seja considerada
inválida, este fato não produzirá o efeito de invalidar as
outras Cláusulas, as quais continuarão, entretanto,
355 vinculatórias e em vigor entre as partes.

19. ANULAÇÃO DE OUTROS CONTRATOS

Este Contrato anulará todo e qualquer Contrato de Venda de Passagens anterior entre as partes do presente, relativamente aos Endereços Autorizados do Agente fora dos E.U.A., sem prejuízo dos direitos e obrigações que possam existir na data deste.

EM TESTEMUNHO DO QUE as partes do presente assinaram este Contrato na data acima declarada.

Diretor Geral da "Transport Association" na qualidade de agente dos transportadores mencionados no preâmbulo do presente Contrato.

Por (Representante Autorizado)
Serviços para Agências - Area 1 - EUA

AGENTE: AGÊNCIA DE VIAGENS LTDA.

Por (nome datilografado ou em letra de forma)
(título ou cargo)

Assinatura

Endereço completo: Brasil

Caso o endereço esteja incorreto, indique abaixo.

Nota: o espaço abaixo é destinado a assinatura de testemunhas e validação notarial, caso exigidos pelas leis locais.

TESTEMUNHA (nome datilografado ou em letra de forma)
(título ou cargo)

Assinatura