



# Book Publishing Contracts: A Checklist of Deal Terms

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1. Rights granted (form, language, market, time):
    - a. Copyright ownership
      - i. Author owns; rights not specifically granted are reserved to Author
      - ii. If work for hire unavoidable, consider termination and reversion
      - iii. Publisher registers copyrights in Author's name
    - b. Territories (EC & Australia considerations)
    - c. Subsidiary rights: first serial, second serial, reprint, British Commonwealth, foreign, translation, motion picture, TV, dramatic, audiocassette, electronic, multimedia, commercial and merchandising -- reserved or granted
      - i. Proportion in which proceeds shared (90% first serial, 75/80% UK and foreign, 50-66% other)
      - ii. Author or agent approval of subsidiary rights licenses controlled by Publisher
      - iii. Pass-through provision (no greater than 30 days flow-through after advance repaid)
      - iv. Hard/soft deal vs. Hard/soft separately
      - v. Author retains dramatic, film, TV, radio, merchandising
      - vi. Author retains rights to characters, settings, title (if fiction with series prospects)
      - vii. Electronic, audio, video, new technologies
      - viii. Book club rights – be sure royalties are fair (don't become a free or low-cost giveaway)
      - ix. Rights not exploited by Publisher within reasonable period (e.g., 2 –3 years after book published) revert to Author
      - x. Include general reservation of rights clause: any rights not expressly granted remain with Author
  2. Amount and schedule of advance and royalties
    - a. Advances – Should be nonrefundable; at worst, if manuscript rejected, first proceeds
      - i. Ideal: 1/2 on signing, 1/4 on delivery of half MS, 1/4 on final acceptance
      - ii. No "payment on publication"
    - b. Royalty Rate (list price, net of freight pass-through vs. net receipts)
      - i. Hard cover: 5,000 - 10%; 10,000 - 12 1/2%; 15,000 - 15%
      - ii. Mass market paper: 6/8% (on first 50-150,000), increasing to 10%
      - iii. Trade paperback: 6/7 1/2% (on first 25,000), increasing to 9/10% (often on net price = 1/3 - 1/4 off list)
      - iv. E-books: highest print rate; 20-50% net
      - v. Academic and scholarly texts, including textbooks: 6-15% net
    - c. Bonus payments or increased payments in the event of:
      - i. Book club sales
      - ii. Bestseller list appearance
      - iii. Award winner: Pulitzer, NBA
      - iv. Motion picture or TV development
      - v. Earn-out advance
    - d. Discount Schedule: consider distinguishing premium sales to business from bulk sales to specialty stores, and request sharing "costs" of deep discounts
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- e. If the book includes advertising or other third party content (other than excerpts from other works published by the Publisher), Author gets 50% of fees paid to Publisher.
- f. Authors and Illustrators of children's books generally share revenue 50/50, unless either hires other to do work.
- g. Grants: Authors of textbooks and nonfiction may require grant funds to cover extra expenses, such as travel, research assistance or special artwork.

### 3. Delivery Issues

- a. Reasonable deadline
- b. Format for delivery – e.g. number of paper copies; disk or CD (Word format); emailed
- c. If illustrations, photos, charts or tables are required, when must Author submit? Who pays for these?
- d. When must Author submit permissions and releases? Who pays for these?

### 4. Acceptance of manuscript

- a. Define work
  - i. Fiction vs. nonfiction
  - ii. Reading level: adult, college level, YA, middle reader, picture book
  - iii. Attach proposal and sample chapters (or sample illustrations)
  - iv. Word count (range)
- b. Publisher must comment - accept or reject -- as submitted (periodic review)
- c. Standard: fit for publication vs. satisfactory to publisher
- d. Author's right to revise in response to detailed rejection
- e. Editing
  - i. Author may perform (extra comp. beyond certain point)
  - ii. If on reviewing galleys Author desires changes, no charge unless cost exceeds 10% of composition cost (chargeable against royalties only) and no charge if due to printer's or Publisher's error.

### 5. Exclusive commitment to particular editor (travelling clause)

- a. If editor removed, Publisher and Author will select new editor
- b. If no agreement, Author may terminate (first proceeds)

### 6. Editor obliged to edit (written editorial guidance, line-editing, proof-reading)

### 7. Publication Issues

- a. Require firm publication date (6-18 mos.)
- b. Print run (e.g., first printing of 2500-5000 copies)
- c. Publisher shall not insert any ads or third party material without Author's consent

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## 8. Author Approvals

- a. Approval of edits and final work
- b. Approval/consultation for title, jacket, layout, artwork, and catalogue copy, including manner, wording, order and prominence of Author or co-author credit
- c. Approval/consultation for advertising, promotion (Author's likeness?)

## 9. Advertising and promotion commitment

- a. Publicity tour
- b. Publicist
- c. Catalogue inclusion
- d. Advertising and marketing budget
- e. Complimentary review and promo copies
- f. Publisher can't allow work to go out-of-print for 2 years

## 10. Cost of permissions, illustrations, photographs

- a. Specify extras required, who obtains/creates, who pays (artwork, photos, maps, index)
- b. Permissions may be costly: ideally, Publisher gets and pays; alt: Author gets, Publisher pays; alt: Author pays up to \$\_\_\_\_\_.
- c. Index - if Author creates, consider asking for more money (bigger advance?)

## 11. Accounting and payment

- a. Publisher keeps accurate records (copies printed, bound, sold, returned, and given away)
- b. Author may inspect (*Audit right*)
- c. Quarterly (at least semiannual) payments, accompanied by detailed accounting
- d. *Pass-through* for sub rights payments exceeding \$1000 [or other amount]
- e. Reserve against returns -- 6 months/25% maximum (alt: after 1st two royalty periods, adjust reserve to reflect actual return rate)
- f. Individual vs. joint accountings (if multiple book contract)
- g. Agent -- all paid to agent vs. Publisher pays agent fee, balance to Author
- h. No deductions from "other agreements"
- i. royalty deductions may be proposed for: deep discounts, special sales, mail order, premium sales, small print runs

## 12. Warranties, Indemnities and Liabilities

- a. Warranties based on work *as submitted by Author*: no indemnity for Publisher's contributions
- b. Author warrants no infringement (best knowledge?)
- c. Author warrants no libel or invasion of privacy (make Publisher judge and assume responsibility – generally more familiar with applicable law than the Author)

- d. Author warrants no errors in formulae, instructions or recipes (make Publisher test?)
- e. If Author indemnifies, it hires lawyer and controls defense -- no settlement without Author's consent
- f. Ideally, limit indemnity to fixed amount (\$\_\_\_\_\_) or 50% of final judgment.
- g. Author not liable for incidental or consequential damages
- h. If Author wins, Publisher bears costs above \$\_\_\_\_\_ (or 50/50 split)
- i. Limit withholding (so Author can use royalties to pay defense costs); require interest-bearing account, state when and how money released
- j. Neither may sue third parties for infringement etc. without consulting other
- k. Insurance protection: Request publisher to extend publisher's coverage to Author as additional insured. (What is the deductible?) (NB. Random House has authors pay *up to 20% of advance* for infringement and libel damages and attorney fees; 50% of legal fees if successfully defended.)

### 13. Remaindering

- a. No overstock sale for 18/24 mos.
- b. Publisher pays at least 10% of net (unless sold below cost)
- c. No remainder sale without offering Author right to purchase at cost
- d. No destruction of overstock without notice to Author, who may obtain by paying shipping costs.

### 14. Revisions

- a. If Publisher wants revision, Author asked first
- b. If Author refuses, Publisher may allow other to prepare
- c. If Author completes, same royalty (vs. revert to base)
- d. If third party, limit chargeback of costs (definitely not deductible from monies due Author under other agreements).
- e. If third party hired, require "work for hire" treatment without change of Author credit.
- f. Limit frequency of revisions
- g. Do not treat as new book (which generally resets royalty to lowest rate)

### 15. Reversion and termination of contract; out-of-print provision; reversion of unexercised rights

- a. Rights revert to Author on termination or if Publisher fails to publish (or otherwise exercise within \_\_\_ years, e.g. 1(c)(viii))
- b. Advances kept by Author (or one-year first proceeds)
- c. Materials and manuscripts returned to Author
- d. Author's right to terminate if no copies available for sale in the U.S. through normal retail channels or through major chains; or not in Publishers [printed vs. online] catalogs; or Publisher sells fewer than \_\_\_\_\_ copies in single year
- e. Author may buy plates at 25% cost of manufacture and remaining copies (bound or unbound) at lowest discounted price
- f. Out-of-print vs. available electronically (including *print-on-demand*)

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## 16. Assignment of Rights/Obligations

- a. Author may assign payments
- b. Publisher cannot assign, or can only assign to equally reputable publisher (or upon merger or acquisition)
- c. No automatic change of ownership upon bankruptcy.

## 17. Agency clause

## 18. Option

- a. Free to submit anywhere; Publisher gets right of refusal
- b. Author submits to Publisher; if no good faith agreement within 30 days, Publisher has no further rights. (Avoid letting publisher respond 30/60 days after first book published: at worst, must respond after first book accepted)
- c. Submission requires only proposal and perhaps sample chapter, not complete ms.
- d. Applies only to works of specific type (e.g. novel, work featuring same character, college-level microeconomics text)
- e. Does not apply to collaborations/joint works or where other Publisher approached Author with proposal.

## 19. Free Copies

- a. 25 per edition
- b. Author may purchase at 50% or lowest discount.

## 20. Conflicting Publications

- a. Prohibiting Author to publish on same subject is too restrictive, especially for academics and experts
- b. Should apply only to "substantially similar" nonfiction works: same subject, same audience, treated in same manner.
- c. Reasonable time limit

## 21. Mediation/Arbitration