

INTRODUCTION

Publication arrangements are not final until the contract has been agreed and signed by both the author and the publisher. The contract will normally be issued by the publisher, who will probably have a standard contract template to cover most types of arrangements. The exact wording and sequence may vary from publisher to publisher, but the following notes highlight the key elements which should be included.

It is important that you as an author understand each aspect of the contract. Do not be afraid to query any unclear provisions or perceived omissions with the publisher before signing. **If you have an agent, they will negotiate the terms of the contract on your behalf.**

1. DEFINITION OF THE WORK

- A definition of the work in question, specifying a firm or provisional title, and a definition of the type of book (e.g. ‘a novel for young adults’, ‘a history of gardening’) and the approximate length agreed (in number of words). An illustrated book may also specify the number of illustrations.

2. DEFINITION OF THE AGREEMENT

- A clear definition of the obligations of the author: to deliver the manuscript of the work in agreed form, complying to the agreed description and length, by an agreed calendar date, along with (if appropriate) any final or rough artwork to be supplied by the author.

3. COPYRIGHT

- The copyright of the work belongs to the author, and the publisher is authorised to register the copyright of the work in the name of the author.
- The publisher should include a clear copyright notice in their editions and ensure that this also appears in any editions licensed by them.
- The publisher should guarantee that the name of the author appears clearly on the book in all its formats, and in any publicity; this accords with the moral right of paternity as enshrined in the *Copyright and Related Rights Act, 2000*.

- Academic and educational publishers, as well as publishers of professional texts, may require the author to assign ownership of copyright to the publisher. This is common for multi-author works and also enables the publisher to take quicker action against piracy. This should not be viewed as an outright purchase of the work (except in cases of a short contribution to a work, in which case there will be a one-off fee). The majority of authors continue to receive an advance against royalties on sales. In trade publishing, ownership of copyright is normally retained by the author, who will then license an agreed range of rights to the publisher.

4. DELIVERY OF MANUSCRIPT

- The publisher will normally include a clause specifying that if the manuscript is not delivered by the agreed deadline, to the agreed length or to the agreed specifications, they may either decline to publish it altogether or may require the author to amend it to meet their requirements (see also (9) *Revision of manuscript*).

5. STATEMENT OF RIGHTS GRANTED

- This is a clear statement of the rights granted to the publisher. Where copyright has been assigned, this will probably include the right to publish and to grant licences in any form or language throughout the world for the full term of copyright and any extensions. In trade publishing, it is more common to grant an exclusive licence to publish in agreed form/s for sale in agreed geographical markets (**often called ‘territories’ in the contract**) for an agreed period of time (usually calculated from the date of publication). Also included may be the right to handle licences for an agreed range of **subsidiary rights (see (18) below)**. Some authors may set a time limit on such licences, and request that the **rights revert (see (7) below)** to them if the publisher has not exploited them within two years from the date of publication.

6. ADVANCED PAYMENT

- A clear description of payments to be made to the author should be outlined. These are negotiable and much will depend on the work and the status of the author. As mentioned earlier, a single outright payment may be made for a contribution to a multi-author work, and, in some cases for a single author for an agreed print quantity. However, the more common model is an advance against royalties payable on actual sales of the work. Advances may be paid entirely on signature of the contract, but are more commonly split – perhaps half on signature and half on publication, or one-third on signature, one-third on delivery and acceptance and one-third on publication. If possible, try to tie the final payment to a calendar date in case publication is delayed.

7. ROYALTY PAYMENTS

- A clear statement of how often the publisher will supply sales statements and pay royalties and on what dates – twice yearly is now common.
- Royalties are usually expressed as a percentage either of the recommended retail price or on net receipts (the latter is more common in educational and academic publishing, and most publishers will calculate royalties on net receipts for bulk sales at high discount). Royalty percentages will vary; they are usually higher for the hardback edition than for the paperback edition and should escalate to reflect higher sales. No royalties are usually payable on copies damaged in transit or sold at or below cost (e.g. if the book is remaindered at a very low price towards the end of its life). If the rights granted to the publisher include publication in e-book form, royalties will be based on net receipts and are usually much higher than for the print editions – 25% has emerged as a common rate.

8. SUBSIDIARY RIGHTS

- Many publishers will also wish to try to license a range of subsidiary rights within the markets granted to them. These might include, for example, licensing a reprint edition to a US publisher or a low-cost edition to a publisher in India; licensing translation rights; licensing pre-or post-publication extracts to a newspaper or magazine (serial rights); granting anthology or quotation rights to other publishers, non-commercial rights (e.g. for Braille or text-to-speech editions for the visually impaired, normally granted free of charge) and electronic rights (e.g. licensing a piece of content to a commercial website). The publisher is usually better placed to handle such rights than the author, but ask about their licensing facilities and their track record. An agreed share of revenue from each category of subsidiary rights should be payable to the author (usually not less than 50%). Other categories of rights include stage, film, television and merchandising rights – these are obviously not applicable to many titles, but it would be wise to enquire whether the publisher has experience in handling them.

9. REVISION OF MANUSCRIPT

- There should be provision for an editor to work on the accepted manuscript with the author. In some cases, this is a fairly straightforward process, but it may highlight a need for the author to revise some of the work. The author should also be allowed a certain amount of time (usually 2–3 weeks) to answer any queries that have arisen and to make any final changes before the manuscript is typeset.
- For some works, especially non-fiction titles, there will usually be a requirement for the author to revise the book if required (this may then be the subject of a new contract). If the author is unable or unwilling to undertake the work, the publisher may employ a third party to revise the work and charge the cost to the original author's royalty account. In such cases, some contracts may provide for the continuing use of the original author's name, subject to payment of a reduced royalty (important in the case of textbooks).

10. PERMISSIONS AND FEES

- It is vital that if your book is to contain any material drawn from third-party copyright sources (e.g. quoted text, photos, drawings, maps, charts, etc.), this matter is discussed before the contract is signed. Some publishers require the author to obtain copyright permission for an agreed range of usage and to pay any fees required; larger publishers may take on this task and cover the cost to an agreed maximum budget. The publisher will wish to archive all correspondence on this clearance.

11. PRODUCTION COSTS

- All technical details of the publication are the responsibility of the publisher – design, manufacture, pricing, marketing, etc. The author may be consulted on the cover design. There may be some costs, however, that the publisher does not cover in the contract. For instance, some publishers may include a clause that requires the author to cover all or half of the costs for an index.

12. WARRANTIES & INDEMNITIES

- The author must provide warranties and indemnities to the publisher stating that the work is original (other than any quoted material for which permission has been cleared) and that it will not give rise to any legal action. Some publishers may require specific warranties that the work does not contain any indecent, defamatory or libellous material. Some publishers may require a warranty that any recipe or instructions in the book will not be harmful to users.
- In some cases, the publisher and/or author may feel, particularly with non-fiction titles, that a legal editor is required to advise on any potentially indecent, defamatory or libellous issues. This relates to non-fiction titles only and a clause should be included stating whether the author or publisher are responsible for costs.

13. PROOFREADING

- The author will be required to check and correct typeset proofs by an agreed deadline. Normally this will be within two weeks of receipt of proofs. Most publishers specify that any amendments (other than correcting typesetting errors) in excess of 10% of the total will be charged to the author.

14. AUTHOR COPIES OF THE WORK

- The publisher will provide the author with an agreed number of copies of the work free of charge; additional copies can be bought at trade discount, but not for resale.

15. REMAINDER COPIES

- There should be provision for the publisher to remainder (sell off copies cheaply) at the end of the book's life; no royalties are payable if the book is sold at or below manufacturing cost.

16. COPYRIGHT INFRINGEMENT

- The publisher is normally responsible for taking legal action against any copyright infringement; the author may be asked to sign any necessary documents. Contracts may provide for the division with the author of any damages awarded.

17. REVERSION OF RIGHTS

- A crucial clause covers what happens when the book goes out of print – an increasingly redundant concept in the age of print on demand and electronic publishing. There should be provision for the author to recover the rights if the publisher is no longer actively exploiting the work – many contracts now tie this to revenue falling below a minimum level in successive accounting periods. Most publishers require the author to proactively request the return of rights.

18. TERMINATION OF CONTRACT

- The contract can be cancelled if the publisher goes bankrupt or if they breach the contract and fail to correct the breach. The publisher will usually have an agreed period to sell off remaining stock, accounting to the author. Any licences granted should continue to run their allotted term.

19. COMPETING TITLES

- Many publishers will include a clause restricting the author from publishing competing works with other publishers. This is most likely to apply to non-fiction and academic titles.

20. TRANSFER OF CONTRACT

- Most publishers will require that the contract can be transferred without the author's consent in the event of the sale of all or part of their company. This is normal, since a requirement to consult every author would probably preclude such a sale.

20. GENERAL POINTS

- There should be provision for arbitration under the terms of the *Arbitration Act 2010*.
- The contract should specify the law applicable to the contract (usually that of the country where the publisher is located).
- Any changes to the contract must be agreed in writing and signed by both parties.
- The contract may spell out how any notices should be served.
- Some contracts may include a list of definitions of key terms such as 'electronic/digital rights', 'net sum received', etc.

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