

“MUST HAVE” TERMS IN A PUBLISHING AGREEMENT

<p>Acceptance</p>	<p>You must have a right to revise, and time limits on acceptance, e.g.:</p> <p><i>Within 45 days of its receipt of the complete manuscript of the Work, the Publisher shall notify the Author in writing whether or not the Work is acceptable to Publisher. If the Work is not acceptable to the Publisher, the Publisher shall give the Author a request for changes and/or revisions. The Author shall have 60 days from the Author's receipt of such a request to deliver to the Publisher a revised Work that is acceptable to the Publisher. The Publisher shall advise the Author within 45 days of its receipt of the revised Work whether or not the revised Work is acceptable to Publisher. If the Work as resubmitted is deemed unacceptable, the Agreement shall be terminated at the option of either party and neither party shall have any further liability to the other. If the Author does not receive any notice from the Publisher within the 45-day periods set forth above, the Work shall be deemed to have been accepted.</i></p>
<p>Agency clause</p>	<p>A clause that allows the author to receive royalties directly from the publisher if the agent is fired, goes bankrupt, or just disappears.</p> <p><i>The Author hereby authorizes the Author's agent, Big Name Agency, to collect and receive all sums of money payable to the Author with respect to all rights in and to the Work. Publisher may rely on the said agent in all matters arising out of this Agreement until the Publisher shall have received written notice from the Author of the termination of such agency. Further, upon the receipt of such notice, the Publisher shall pay all further sums payable pursuant to this Agreement directly to the Author or to such other persons as the Author shall direct in writing.</i></p>
<p>Audit</p>	<p>Essential:</p> <p><i>Upon written request and reasonable notice to Publisher, the Author's certified public accountant may, within one year of any royalty statement, examine the Publisher's records of accounts as they relate to the sales and inventory of the Work for the purpose of certifying the accuracy of Publisher's accounting to the Author. The audit shall be during regular business hours and Publisher shall reasonably assist in the audit. The Author shall pay for all costs in connection with such an examination unless errors of accounting amounting to five percent (5%) or more of the total sum paid to the Author shall be found to the Author's disadvantage, in which case the cost shall be borne by the Publisher. At Author's option, the records of account may be performed through examination of photocopies or facsimiles of Publisher's applicable records.</i></p>

<p>Author Indemnity</p>	<p>Good:</p> <p><i>The Author will indemnify the Publisher against any loss, injury, or damage finally sustained (including any legal costs or expenses and any compensation costs and disbursements paid by the Publisher) occasioned to the Publisher in connection with or in consequence or any breach of this warranty.</i></p> <p>Better:</p> <p><i>The Author will indemnify the Publisher against any loss, injury, or damage finally sustained (including any legal costs or expenses and any compensation costs and disbursements paid by the Publisher) occasioned to the Publisher in connection with or in consequence or any breach of this warranty and which the Publisher is not able to recover under its insurance policies.</i></p>
<p>Bankruptcy</p>	<p>Publishers do go out of business. (In general, bankruptcy clauses such as this are unenforceable under the Bankruptcy Act, but there is an exception to the general rule for intellectual property licenses).</p> <p><i>In the event of the bankruptcy, insolvency or liquidation of the Publisher, this Agreement shall terminate and all rights granted to the Publisher shall revert to the Author automatically and without the necessity of any demand or notification.</i></p>
<p>Editorial Changes</p>	<p>You should have control of your words:</p> <p><i>After the Work has been accepted by the Publisher, no material change may be made without the Author’s approval. The Publisher, however, may copyedit the Work in accordance with its standards of punctuation, spelling, capitalization, and usage. The Publisher shall send the copyedited Work to the Author, who shall make any revisions and corrections and return it within two weeks of receipt.</i></p>
<p>Net Receipts Royalties</p>	<p>Even if your royalties are generally base on list price, some of the subsidiary rights will be based on “Net Receipts” or similar term. Use this definition:</p> <p><i>“Net Receipts” means actual cash receipts from all sales of the Work in any media or format less shipping costs, returns, and sales or value-added taxes remitted to Publisher by the purchaser.</i></p>
<p>Return of advance</p>	<p>This is a standard “first proceeds” clause:</p> <p><i>If the Work is not accepted by Publisher, the Author shall make every effort to sell the Work elsewhere, and the Author shall be obligated to repay all advances and other charges, previously paid hereunder, but such obligation shall be limited to repayment from the first (and all) proceeds of any contracts with others concerning the Work or any rights thereto.</i></p>

<p>Out of Print Definition</p>	<p>Absolutely critical. Get as strong a clause as possible:</p> <p><i>The Work shall be considered out of print whenever the Work is not available in the United States through regular retail channels in an English language book form edition (not print-on-demand, e-book, or other electronic or mechanical means of reproduction); or when the Publisher fails to list the Work in the Publisher’s catalog; or when annual sales of the Work fall below one hundred (100) copies and/or the stock of the Work falls below fifty (50) copies.</i></p>
<p>Publication</p>	<p>There must be a time limit for publication. Typical is 18 months:</p> <p><i>If the Publisher does not publish the Work within 18 months from the date of acceptance for reasons other than first serial or book club use, delays of the Author in returning the copyedited manuscript or proofs, the Author's failure to comply with requests made by the Publisher's counsel or delays caused by circumstances beyond the Publisher's control, and if the Publisher at any time thereafter receives written notice from the Author demanding publication, the Publisher shall within 90 days of the Publisher’s receipt of such written demand either publish the Work or revert to the Author in writing all rights to the Work granted to the Publisher in this Agreement, subject to any outstanding licenses, which shall be assigned to the Author, and the Author shall retain any advance payments made under this Agreement prior to such reversion as liquidated damages for the Publisher's failure to publish the Work.</i></p>
<p>Reserve on Returns</p>	<p>Also critical. Many publishers overestimate returns in order to keep your money as long as possible. This is a reasonable clause:</p> <p><i>The Publisher may maintain a reasonable reserve against returns from distributors, retailers, and customers, in any accounting period, not to exceed twenty percent (20%) of the amount due to Author, and Publisher shall indicate such reserve, if any, on the Author’s statement of accounting. Such reserve shall be maintained for no more than one accounting period.</i></p>