

“MUST NOT HAVE” TERMS IN A PUBLISHING AGREEMENT:

<p>Advances</p>	<p><i>“Payment on publication.”</i></p> <p>(Ideally, one half at signing, 1/4 on delivery of half the manuscript, 1/4 on final acceptance, and advances should be nonrefundable unless there is author fault or the manuscript is rejected; and even then, the advance should be refundable only if the work sold to other publisher – a “first proceeds” clause.”)</p>
<p>“All rights”</p>	<p><i>“All rights”</i> to publisher for term of copyright without an out of print clause. Work-for hire contracts in fiction (unless you’re a ghostwriter).</p>
<p>Agency clause</p>	<p><i>“All sums of money due the Author under this Agreement shall be made payable to, and collected and received by, the Author's agent, Big Name Agency, and the receipt of such sums by said agent shall be a good and valid discharge of all such indebtedness. The said agent is hereby empowered by the Author to act on the Author's behalf in all matters arising from and pertaining to this Agreement. For services rendered and to be rendered, it is agreed between the Author and the agent that the Author does hereby irrevocably assign and transfer to said agent, and said agent shall retain, a sum equal to 15%, as an agency coupled with an interest, out of all gross monies accruing to the Author's account under this Agreement, prior to deductions from or charges against such monies for any reason whatsoever.”</i></p> <p>(This is an almost universal clause requiring the publisher to send all royalties to your agent, and to keep his/her commission before passing the money on to you. Watch for the words “irrevocable” or “coupled with an interest” anywhere in this clause. In many states, either term can make your agency relationship irrevocable; even after you have fired the agent and the book is re-published with another publisher. You should have the right to direct the publisher to send royalty checks directly to you in the event you terminate your agency or in the event of the agent’s death or bankruptcy.)</p>
<p>Arbitration clause</p>	<p>Avoid it. Although it may seem counter-intuitive, mandatory arbitration clauses generally favor the publisher. Often an author’s only real clout is the threat of a lawsuit. Instead:</p> <p>In the event of any dispute or disagreement regarding this agreement, the parties agree that common-sense should prevail, and that if necessary an independent person or persons mutually agreed upon by both parties shall be called upon to make a decision which is binding upon both parties. If the parties cannot agree on an arbitrator within thirty days of a written arbitration request by either party, the parties may pursue remedies in law or equity in any court of competent jurisdiction.</p>
<p>Non-compete clause</p>	<p><i>“The Author shall not write, edit, print or publish any work that might interfere with or injure the sales or licensing of the Work or allow the use of the Author’s name in connection with any such work.”</i></p> <p>(This is too broad, there is no standard of reasonableness, and doesn’t allow</p>

	the author to post sample chapters on his or her web site)
Cross-collateralization clause	<p><i>“All Works covered by this Agreement or any other agreement between Publisher and Author shall be considered one account and shall be accounted for jointly or collectively.”</i></p> <p>(Let's say you have just submitted your third novel, KILLING MADLY, to your publisher. Your first novel, KILLING SPREE, sold well, but your second, KILLING FRENZY, earned out only \$10,000 of its \$12,500 advance. Under the terms of your current publishing agreement, you are to receive a \$15,000 advance for KILLING MADLY, upon acceptance. But when the check comes, it's only for \$12,500 - the publisher has deducted the \$2,500 shortfall from KILLING FRENZY. (Alternatively, the publisher might pay you the full \$15,000 advance, but after it is earned out, it deducts the \$2,500 from future royalties.)</p>
Non-negotiable contracts	<i>“Take it or leave it.”</i> Enough said.
Option Clause	<p>Delete it. (If not, make sure it imposes no real burden. Get rid of any contract language requiring you to submit a completed manuscript, rather than a proposal; lengthy (more than 60 days) consideration periods for the publisher; and a requirement that you offer your next book to the publisher on the same terms as the current book. Ideally, you should aim at setting up a very limited period during which the publisher may bid on your next book (“right of first negotiation”), and permitting you to sell the book to other publishers if the publisher isn’t interested. And don’t accept any clause that stipulates you can’t accept an offer from another publisher if it’s not on “better terms.” That may sound logical, but what if Publisher A offers you more money up-front, while you trust Publisher B to do a better job at marketing? Or perhaps you’d prefer to try a smaller publisher that can’t pay as much, but can show you more personal attention. You should always have the right to refuse your publisher’s offer, no matter what the terms are, if you choose. All the first option should do (if you have to include it) is give the publisher a right to read the work and make an offer.</p> <p>You’ll also want to restrict the definition of “next work.” Make sure it’s limited to the next work in the same genre, or in the same series, or the next work that’s in categories the publisher deals with. And make sure the option is for no more than one book.)</p>
Royalty Deep Discount Clause	. . . that “kicks in” at 50%. Most books are sold to bookstores at a discount of 55 percent (or more, even up to 65% for Walmart), a 50% clause in effect guarantees that your royalty rate will be half of what it appears to be.