

Textbook Contracts: A Guide

This is a guide for textbook contracts between authors and publishers. It can be used by an author, an author and an agent, or an author and an attorney to negotiate a contract. It represents a balance between the interests of an author and a publisher." It was prepared from both the author's and publisher's perspective with the goal of producing better textbooks.



Authors and publishers recognize that the contract prepared by the publisher is merely an offer from the publisher and subject to various degrees of negotiation. The negotiation process and the final contract will be determined by many variables such as:

- *Ability, experience and reputation of the author and the publisher*
- *Previous negotiation experiences of the author and the publisher*
- *Market niche of the book*
- *Competition for the book*

Authors and publishers are encouraged to send suggestions for improving this guide to Info@TAAonline.net

Please note: This document is a guide for contracts -- not a "model contract." It can be used effectively for the author and the publisher to engage in the negotiating process.

Unique Parts of the Guide

- Table of Contents
- The Chronological Sequence of Parts A
- Time Schedule for Publishing the Book
- A Marketing Plan

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Preamble

This is a contract between the Author [insert name of Author]* located at [Insert location] and the Publisher [insert name of Publisher]* located at [Insert location] to publish a Book [insert ancillaries if applicable] tentatively titled [Insert title of Book and hereafter referred to as the "Book."]

* Brackets [] in the text means information will be inserted for a specific contract.

1. Granting of Rights by the Author to the Publisher

The Author grants to the Publisher the right to publish and market the Book [Insert for example, in the United States of America, in the English language, and for ten years] after the date of this contract. The Author retains all rights not specifically granted to the Publisher.

2. Electronic Rights

The Author retains all rights to the Book' for use in all electronic media presently known or developed in the future.



A word about royalties

Royalties are the proverbial two birds in the bush. Far better to negotiate for non-refundable advances. In any event, know whether your royalties will be based on list price, invoice price, or net receipts. And if they are based on the latter, ask the publisher for its discount schedule and for some historical averages so that you can compare apples to apples in the event you are the happy holder of two or more contract offers.



"The sticker price of a car on the lot is always negotiable," he said. "So is an authoring contract."

Author attorneys share contract negotiation advice

Attorney Michael Lennie compares author-publisher contract negotiations to car shopping. "The sticker price of a car on the lot is always negotiable," he said. "So is an authoring contract." Lennie and fellow author attorney Lilly Ghahremani share the following advice for negotiating contracts:

- Be reasonable with the delivery date.
- Remember that permissions can be very expensive - the permission clause only talks about who's going to pay.
- Beware of vague words like "satisfactory" and "acceptable".
- When working with a new co-author, be frank, and get everything in writing.
- Keep a record of everything you send in a revision. Also keep a copy of all e-mails, files, etc.

3. Copyright in Author's Name

The Publisher will register the copyright in the Author's name no later than [Insert date] and send a copy of the copyright document to the Author. The copyright notice and Author's name will appear on each Book.



4. Competing Publications

A. Until the expiration of this contract [Insert time such as 10 years], the Author will not publish or participate in the publication of a Book on the [Insert the specific subject] to be marketed at the [Insert the specific educational level for which the Book is intended]. B. Until the expiration of this contract [insert time such as 10 years], the Publisher will not publish or participate in the publication of a book on the [insert the specific topic] to be marketed at the [insert the specific educational level for which the Book is intended]. C. If the Publisher is bought or merged with another Publisher while the Book is being prepared, the new Publisher will be obligated under the terms of this contract.

5. Time Schedule for Publishing the Book

A. The Book will be published by the Publisher by [Insert date] in accordance with the Time Schedule for Publishing [insert name of Book] which is Attachment A to this contract. B. If one party does not meet a deadline date in the Time Schedule and the parties agree to an extension of time, the number of extension days agreed upon by the Author and the Publisher will be added to the final completion date cited in the Time Schedule. C. If the Author is

delinquent in submitting drafts of the manuscript more than [Insert number of days] days after notification by the Publisher, the Publisher can terminate the contract and the Author will return all advances received from the Publisher. D. If the Publisher is delinquent in editing the drafts more than [Insert number of days] days after notification by the Author, the Author can terminate the contract and retain all the advances and grants. All rights granted to the Publisher will revert to the Author. E. The manuscript will conform to the tentative outline of the Book and the sample chapter attached to this contract. The Publisher will inform the Author in writing within [Insert number of days, within days of receipt of the manuscript] if the manuscript, in the Publisher's opinion, does not conform to the sample chapter. The Author will have [Insert days] to revise the manuscript. If the manuscript is revised by the Author and is still not satisfactory to the Publisher, or if the Author does not agree with the Publisher's suggestions, the dispute will be submitted to binding arbitration. The arbitration will follow rules of the American Arbitration Association as described in Part 26 of this Guide.

6. Communication between Author and Publisher

Time is of the essence for both the Author and the Publisher. The Author and the Publisher will respond to every written and or electronic communication no later than [Insert number of days] after the date the original communication is posted.

7. Manuscript Responsibilities of Author and Publisher

Manuscript will be provided by and paid for as follows:

	Provided by Author	Provided by Publisher	Paid for by Author	Paid for by Publisher
Teacher's manual				
Tests				
Computer disks				
Workbook				
Student solution manual				
Teacher solution manual				
Permissions				
Photographs				
Drawings				
Maps				
Charts				
Computer screens				
Index				
[Insert other segments]				

Q: How does one apply for copyright?

A: Lisa Moore, principal of The Moore Firm, LLC: "It's very easy to apply for a copyright registration. You can do it online. The Copyright Office's website is actually an excellent resource. The process is changing. Back in the day, you had to fill out the form depending on what you were registering. The Copyright Office changed that, and they're now utilizing one common form that can be done online. It's much cheaper that way, \$35 and you get your registration back much more quickly. If you mail in the old paper forms it takes somewhere between a year and two years to get it back, but if you do it online it's somewhere between three and six months.



Copyright infringement matters have a very short statute of limitations, so it's critically important that you register as soon as possible.

In the overwhelming majority of jurisdictions in the United States, if you don't have a registration back from the U.S. Copyright Office you cannot institute litigation. There are only a handful of jurisdictions where simply having made application, even though you don't have the filed, stamped registration back, they will allow you to invoke the jurisdiction of the courts.

The other benefit of doing it early is that you can register multiple unpublished works on one form and save yourself a lot of money. The copyright form in and of itself is about nine questions and half of them are your name and address. It's very easy to do."

8. Creative Rights of Author

No changes will be made in the content and written expression created by the Author without the Author's permission except for mutually agreeable copyediting changes by the Publisher.

9. Warranties and Indemnities of Author

The Author warrants that he/she has exclusive rights to the Book and it has not been published previously; that the Book does not, to his/her knowledge, infringe upon any copyrights or literary rights of other persons.

10. Permissions to Use Other Materials

At the time final draft of the manuscript is delivered to the Publisher, the Author will provide the Publisher with written permissions for copyrighted materials not in the public domain. The Author will pay for the permissions [insert, if applicable: except for a non-refundable \$_____ grant paid by the Publisher to the Author].

11. Grants by the Publisher to the Author

When this contract is signed by both parties, the Publisher will pay the Author a non-refundable grant of [Insert amount of money) to defray the following expenses:

[Insert expenses (such as software, photocopying, supplies, computers, and phone) and amounts]

12. Author's and Publisher's Changes in Proofs

The Author agrees to minimize discretionary changes in the proofs.

If the cost of the Author's discretionary alterations are in excess of [Insert %] of the original composition costs verified and are identified in writing by the Publisher at the Author's request, the excess alteration expenses will be deducted from the Authors royalties.

13. Publication of the Book by the Publisher

A. The Publisher will publish the Book at its own expense in accordance with the Time Schedule for Publishing, Attachment A.

B. If the Publisher does not publish the Book as stipulated in the previous paragraph, within [insert number of days] after receiving written notice from the Author about intention to terminate the contract, rights to the Book will revert to the Author and the Author will retain all advances and grants. The Author will be compensated for the amount of royalties projected by the Publisher when the Book was planned.

14. Disposition of Manuscript

Within [insert number of days] days after a written request from the Author, the Publisher will return the final draft of the manuscript to the Author. The Author must request the return of the final draft of the manuscript within [insert number of days] days after the publication of the Book.

15. Marketing of the Book by Author and Publisher

The Author and the Publisher will exert their best efforts to market the Book in accordance with the Marketing Plan for the Book described in **Attachment B** of this contract.

16. Promotion of Book

To promote the Book, the Publisher may use the Author's name, photograph, and biographical data in a manner consistent with the Author's professional stature.

17. Royalty Payments by Publisher to Author

The Publisher will pay the Author royalties as follows: [For items A-D below, insert percent of royalty based on net or gross price for all parts of the publication such as the Book, teacher's manual, and computer disks.]

- A. Domestic sales including the United States, territories of the United States, and Canada.
- B. Foreign sales
- C. Publisher's domestic affiliates and subsidiaries
- D. The Book marketed with other publications

18. Subsidiary Rights and Royalties

A. Subsidiary rights may be licensed by the Author or the Publisher and the proceeds allocated as follows:

Subsidiary Right	License Grantor		Proceeds Allocation	
	Author	Publisher	Author	Publisher

B. The Publisher's rights in this Part cease if the Publisher is in default of any responsibility in this contract. The License Grantor will send a copy of the license to the other party within [Insert number of days] after signing the license. The Author retains all subsidiary rights not identified in this Part. The License Grantor will collect royalties and distribute them in accordance with Part 19 of this Guide.

19. Royalty and Book Inventory Reports by Publisher to Author

A. Starting with the date of publication, the Publisher will send the Author royalty statements and payments of royalties postmarked no later than [Insert number of days] after the close of each [Insert number of months] accounting period. The report will include a column titled "Cumulative to Date" and a second column "Last Accounting Period":

Cumulative to Date:

Number of copies

Printed

Sold for each royalty rate

Returned for each royalty rate

Distributed free

Unaccounted for

Remaining in inventory

Royalties paid Author for each royalty rate

Last Accounting Period:

Number of copies

Printed

Sold for each royalty rate

Returned for each royalty rate

Distributed free

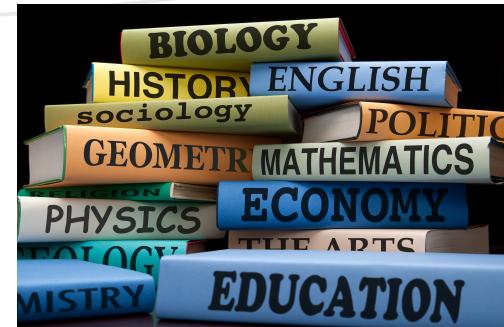
Unaccounted for

Remaining in inventory

Royalty paid Author for each royalty rate

B. If the royalty payment is past due, the Publisher will pay to the Author 10% interest per annum on the past-due royalty.

C. Any reserve retained by the Publisher from royalties against the return of Books will have the following restrictions:



How big a market are we talking about? This will give you a sense of how the publisher views your book and whether you both see it the same way.

(1) Will be established for no more than four accounting periods after the initial publication of the Book.

(2) Will not exceed [Insert %] of royalties due for any one period.

20. Inspection of Publisher's Accounts by Author

Within [Insert number of days] days of written notice to the Publisher, the Author or the Author's designated representative will have the right to audit all of the Publisher's accounts relating to the Author's royalties. If errors are found that are unfavorable to the Author, the Publisher will pay the deficit to the Author, within five days of the agreement to settle, with interest at 10% per annum from the date of the error(s). If the error(s) exceed 5% of royalties due the Author, the Publisher will pay for the cost of the audit.

(continued)

21. Copies of Book to Author Without Charge

Within [Insert number of days] days after publication, the Publisher will send to the Author [Insert number of copies] copies of the Book without charge. The Author may purchase additional copies at [Insert percent] percent of the lowest price at which the Book is sold in the domestic trade. These Books are not for resale and are not included in the Author's royalties.

22. Revisions of the Book

A. The Author will be the Author for all revisions of the Book except by agreement between the Author and the Publisher. This contract will apply to all future editions of the Book except where otherwise noted.

B. If the Author declines or cannot revise the Book, the Publisher may have the Book revised by another qualified author. The original Author will receive [Insert % of royalty the Author will receive for each subsequent revision].

23. Assignments and Successors

This contract may not be assigned by the Author or the Publisher without the written consent of the other party. The Author may assign royalty payments without the Publisher's consent. The contract will be binding on the Author and the Publisher and their heirs, assigns, successors, and administrators.

24. Litigation Against Other Parties

The Author and the Publisher may litigate jointly against other parties about issues concerning the Book. If either party does not participate in the litigation, the party that litigates will deduct expenses and share the compensation equally with the non-litigating party.



Preparing for the next edition

1. Ask the editor for diary reviews from users. Diary reviews are first semester usage reviews by users of the book. The publisher slices the binding off the book, creates a three-hole punch, and puts it in a binder with blank pages in between each text page. Diary reviews offer quick, right after teaching reactions to the text; are good for reprint errors; and can be used to begin a file for a revision.

2. Ask your editor for reviews from users of competing texts. If your book didn't win the adoption, this helps you find out why. It's important for revision purposes, and to establish a relationship with the school so that you may get the adoption next time (with the hope that once you get it you will keep it).

(continued)

25. Termination of Contract

A. The Author, by written notice to the Publisher, has the right to terminate this contract for the following reasons:

- (1) The Publisher fails to publish and market the Book as specified in Part 15.
- (2) The Publisher does not mail royalty statements and royalty payments as stipulated in Part 17.
- (3) The Publisher declares the Book out-of-print and within [Insert number of days] days of written notice from the Author, the Publisher does not print additional copies. The Book is out-of-print when sufficient printed copies are not in stock for sale in the customary marketing channels for the Book.
- (4) The Publisher becomes bankrupt or insolvent, or the Publishers assets are assigned to a creditor. 7
- (5) The Publisher is purchased by another entity (Publisher, corporation, etc.) unacceptable to the Author. Unacceptability may result when the merged entity has a competing work, lacks marketing expertise appropriate for the Author's work, or such other cause as would result in reduced efforts to market the work.

B. If this contract is terminated by the Author for reasons identified in Part 25A, all of the Publishers rights revert to the Author and the Author has the right to purchase the media by which the Book was printed such as computer disks, imposed film, printing plates, and offset negatives. The Author's request for the media must be made within [Insert number of days] days of the termination notice and the price will be the lesser of cost or remaining value.

C. If the contract is terminated by the Publisher, all of the Publisher's rights revert to the Author and the Author has the right to purchase the media by which the Book was printed such as computer disks, imposed film, printing plates, and offset negatives. The Author's request for the media must be made within [Insert number of days] days of the termination notice and the price will be the lesser of cost or remaining value.

26. Editorial Staff Changes by Publishers

Should the editorial staff responsible for publishing any edition of the Book change while the Book is under development, the Publisher will notify the Author immediately and will seek advice from the Author of a suitable and mutually acceptable replacement.

27. Arbitration

Disputes between the parties arising out of this contract will be submitted to binding arbitration in [Insert a city] in accordance with the rules of the American Arbitration Association. The arbitration award may be entered in a court of proper jurisdiction.

28. Notices to Parties

A. When written notice is required by this contract, it will be transmitted by certified mail, return receipt requested, addressed to the Author or Publisher at the addresses identified in the introduction to this contract. Changes of addresses must be made by written notice to the other party within [Insert number of days] days after the change.

B. All dates referred to in this contract mean the post-marked date on the envelope in which the communication is sent.

29. Entire Contract and Modifications

This contract is the entire contract between the parties and all modifications must be in writing and signed by both parties.

30. Waivers and Defaults

If there is a waiver of a breach or default in this contract, it will not be deemed a waiver of a later breach or default of either the same provision or any other provision of this contract.

31. Governing Law and Jurisdiction

A. The Publisher will publish the Book at its Author and Publisher

This contract will be governed by the law of the State of (Insert name of state.) In witness whereof, the Author and Publisher have signed this contract on the dates following their signatures.

Author _____

Publisher: _____

Date _____

Title: _____

Attachment A: Time Schedule for Publishing

[Insert name of Book]

[Insert date]

The Author and the Publisher agree to this Time Schedule and the conditions as described in Part 5 of the contract for this Book.

Manuscript sent from	Unit 1	Unit 2	Unit 3	Unit 4
	See Note A			

Draft 1

Author to Editor	See Note B			
Author to Editor				
Editor to Author				

Draft 2

Author to Editor				
Editor to Author				
Author to Editor				

The Book will have a [Insert year] copyright.

Final manuscript will be transmitted to the printer by [Insert date].

The Book will enter the production process by [Insert date].

The Book will be printed by [Insert date].

The Book will be available for adoption by [Insert date].

Note A: "Unit" can be any segment of the Book as for example single or several chapters of the Book.
Note B: Author and Publisher will agree upon dates to insert for each draft of each unit.

Attachment B: Marketing Plan for [Insert name of Book]

[Insert date]

The Author and the Publisher agree to this Marketing Plan and the conditions as described in Part 15 of the contract for this Book.

[Insert information such as:]

- Number of copies for first printing
- Budget for marketing
- Advertised number of times in specific journals
- How listed in Publisher's catalog
- Advertising comparable to another book now on the market
- Listed in catalog with copy provided by Author
- Author's presentations at professional meetings and who will fund expenses
- Author approval of cover for Book