



Alliance of  
Independent  
Authors

## Legal and Contracts Advice for Indie Authors



# Contract Guidance and Advice

How to negotiate a  
publishing contract

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### PUBLISHING TEAM

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## Introduction

The most important skill you have as an author and a rights seller is the ability to judge and negotiate a sale.

Generally speaking, many authors tend to undervalue themselves and are poor negotiators. On the one hand, we are afraid to ask for our due, or in some cases for anything at all. Knowing this, a publisher will start by offering a lower figure than they are prepared to pay. Too many authors simply accept this offer and leave their money on the table.

On the other hand, we can be overemotional and attached to our positions. You may feel your book is your baby. If you cannot sufficiently contain your emotions, you should not handle the negotiation yourself. It's extremely important not to become emotional when you're negotiating.

Losing your patience or your temper, or insulting the other side, rarely achieves your goals and can cause you to lose ground. If you are feeling threatened or bullied by the other party's negotiation tactics, step back and look for ways to strengthen your own.

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You will be working with this publisher for a long time after the negotiation, so a win-lose position, where you see yourself in opposition to the publisher and think you can only win by ensuring that they lose, is a bad idea.

The information discussed in this guide should not be considered legal advice, and is provided as guidance only.

ALLi recommends authors seek legal advice if they're unsure about how to proceed with a contract negotiation.

We hope you find these examples useful, and welcome your feedback.

## The Art of Negotiation

The most important part of negotiation is preparation. So before you step into contract haggling, take the time to think about, and write down, the following.

First, establish what is up for negotiation. How many titles? Which territory? What rights? How long?

Understand which parts of a publishing contract are up for negotiation and which are not. Aim as high as is reasonable. The publisher will never offer more than you try to negotiate but don't display ignorance of the business by asking for unreasonable levels of royalty, for example. If you have offers of interest from more than one publisher, or would like to, that puts you in a stronger bargaining position.

If you're pitching rights to a publishing imprint that is part of a group, bear in mind that imprints from the same group will rarely bid against each other. If a book is being sold by multiple submission or auction, any imprint can make an offer but if, toward the end of negotiations, two imprints from the same group are the ones left bidding, one of them must withdraw to protect the group against a situation of having two of their own editors competing against each other and escalating costs that must be paid by the same bank account.

Once a publisher has made an initial offer, draw up the checklist of the portions of the offer you want to improve and why. Most people like to

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see themselves as reasonable, even in contract negotiation. If you ask for a change in the contract and provide a reasonable justification, the other side is more likely to accommodate your request. By having a priority list, you'll be better prepared to give up something low on your list to prevail on something more important.

Negotiating around more items than you intend to settle for gives you points you can trade with, and cede, in order to win other things that matter more to you. This makes you look reasonable and civilized, and can make a publisher warm to your position as negotiations proceed.

Keep the negotiation open at all times. If you are face-to-face, keep nodding your head, even when you are saying negative things or asking for more. Never use the word "No" unless you are bringing the negotiations to a close. Keep the offer in play.

**Speak slowly.** It makes you seem more relaxed and authoritative.

**Use silence.** Not speaking at all, when done sparingly and at the right time, can be your best tool. Most of us jump in to fill a silence, giving away negotiating points unwittingly. Don't fall into the trap.

**Be sure to keep a win-win mind-set throughout.** Good phrases to use include:

- "To be honest, I'm finding it hard to be delighted with that."
- "I can see that works well for us both."
- "Can you improve on that?"
- "Do you have room to maneuver on this one?"
- "I was expecting it to be a little higher."
- "Yes, I'm prepared to concede that point."
- "I see where you're coming from."
- "That seems fair."
- "What can you offer me in return for backing down on that one?"

**Compliment the other party** when they make a good point.

**Keep something in reserve** that you can use to trade off.

**Don't be afraid** to express your disappointment. Push for what you want as persuasively as possible or pull something creative out of the hat if all seems lost.

Sometimes authors end up with an unbalanced contract, pushing for small concessions to the detriment of bigger

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## Closing the Sale

If a publisher makes an offer for your book, take time to understand the contract you're offered, particularly if you'll be paid on net receipts. Make sure you understand, and the contract specifies, what net actually means.

If you have a book that is performing particularly well in the primary market,

and that has significant rights potential, you may want to make multiple submissions, a technique that is more and more commonly used.

Also on the increase for major projects is the auction where publishers compete for a hot title. Under the auction system, all required aspects of the deal are outlined up front: royalty payments, including escalators; the advance; and any subrights that are included, together with promotional activity and advertising.

Selected publishers are approached, given the information and materials, briefed on the terms of the auction and given a deadline for the submission of the bid.

Auctions can be conducted at book fairs by telephone or email.

The first round may consist of blind offers, i.e. none of the participants are aware of what bids have been made or whether they stand in the bidding stakes; in the next round, they are informed of the highest bid made and are required to submit a higher offer to secure the rights.

It is rare that a title warrants an auction and they can be minefields, even for experienced agents.

In several very well-publicized cases, organizers of auctions have been accused of hyping up the floor price. In others books that attracted astronomical sums subsequently failed to deliver an adequate return.

We know of at least one auction where no one bid, so the agent and author missed the opportunity to revise and resubmit their pitch.

These experiences lead to bad feelings all around and may have an adverse effect on other potential rights sales.

“I strongly advise un-agented authors to steer clear of trying to auction their own books,” says Carole Blake in *From Pitch To Publication*.

“Some agents have got themselves and their authors into muddles through improperly run auctions.

“When I was President of the Association of Authors’ Agents, I received more complaints from publishers on this subject than any other.”

If your book is hot, then an alternative is doing multiple submission, inviting the publisher to submit a blind best bid.

Once firm interest in your book has been expressed, the negotiation will start. The aim is to reach agreement not only on the financial terms but also on issues like publication schedule, modifications to the license, duration and territorially, reversion and determination and, increasingly, marketing and promotion.

The aim is win-win, a deal considered unfair by either party is unsatisfactory.

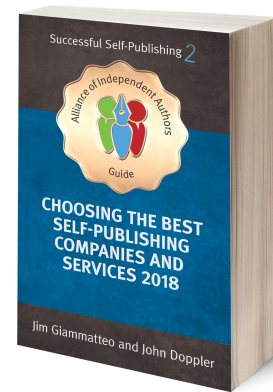
Remember, the deal is not finalized until a contract is signed by both parties.

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The AskALLi Quick & Easy Guides to Self-Publishing address the most common questions our members have about self-publishing.

The Guides are organized across the seven stages of the publishing cycle: editorial, design, production, distribution, marketing, promotion, and licensing rights. There are also guides to running a successful business as an indie author.

For more advice and a daily blog, visit our Self-Publishing Advice Centre at <http://selfpublishingadvice.org/blog/>

Founded by novelist and poet Orna Ross, the Alliance of Independent Authors is a global nonprofit organization offering authoritative advice, experienced guidance, and advocacy within and outside the publishing industry.

Its mission is ethics and excellence in writing and publishing. The Alliance offers a variety of member benefits, including discounts and incentives and collaboration and connection with the best self-publishing authors and advisers in the world.