

COMMON AGENT'S LETTER AGREEMENT/CONTRACT—QUICKNOTES BY KATHRYN GOLDMAN

CONTRACT LANGUAGE IS IN BLACK. My quick notes are bulleted in blue and not part of the contract.

GENERAL QUESTIONS FOR AGENTS:

- WHAT ROLE IS THE AGENT GOING TO PLAY TO HELP YOU DEVELOP YOUR BOOK? ANY UNDERSTANDING YOU HAVE ABOUT THAT SHOULD BE IN THE CONTRACT.
- IS THE AGENCY GOING TO MONITOR THE PUBLISHER, EDITING, COVER DESIGN, ETC.?
- WHAT ROLE WILL THE AGENCY PLAY IN MARKETING?

DEAR AUTHOR:

This letter will confirm our agreement. Please indicate your assent by printing and signing three originals and returning them to us for countersignature.

- Do your research. Ask to speak with the Agency's other clients.
- Make sure this Agency is the right fit for you.
- What other books/authors have they represented that are like yours/you?

In consideration of services rendered and to be rendered by the Agency you have appointed us as your sole and exclusive agent and representative with respect to your literary work and, further, with respect to any subsequent work which you submit to us for representation and which you and we agree by email or other writing that we will represent (each such work hereinafter referred to as the "Work").

- Clarify that you are under no obligation to submit any further work to the Agency and are free to use another agent or no agent for your next work.

You represent and warrant that you control the rights to the Work and that you have the right to enter into this agreement.

- You are agreeing that you are the owner of any work you create.
- Remember, you do not have exclusive rights to any work you did not create (such as images or song lyrics, for example) and which you used in your book, unless you purchased (or licensed) those rights.
- If you did purchase rights to any portion of your book, that purchase of rights (also called an assignment or license) must be in writing signed by the creator of those pieces of the work.

We agree to counsel and advise you with respect to the further development and completion of the Work, to use our best efforts to place the Work for publication with a publisher acceptable to you, and to exploit such other publication and subsidiary rights in and to the Work as may be appropriate under the circumstances including self-publishing. We shall have the right to use and/or employ sub-agents and corresponding agents for such purposes, and we shall be solely responsible for any commission or other compensation due them.

- Ask them what their best efforts are and how they intend to report to you on their "best efforts."
- Generally, there are two types of rights: primary publication rights, and subsidiary rights. Subsidiary rights are usually negotiated with the publisher and not the Agency. (Refer to [COMMON PUBLISHING CONTRACT—QUICKNOTES](#))
- By including a reference to self-publishing, the Agency seems to be trying to lock down rights to a percentage of self-published profits. This could mean you have to pay them 15% of the gross receipts for selling books off of your own website. Provisions such as this should be deleted.

We shall have the right to receive and/or retain as our commission the following listed percentages of all gross proceeds and other things of value at any time received or derived by you from any publisher(s) of the Work, in whole or in part, in any and all languages, and from any licensee or assignee of any and all rights to the Work throughout the world:

- Is this the best agency for foreign language and international sales? Remember that you can slice and dice your rights between agents that have different specialties or strengths.
- a) 15% of such gross proceeds from the exploitation of English language publication rights in the United States and Canada and from the exercise of print (and related) subsidiary rights in such territories.
- 15% is still a common percentage for representation.
 - If you write non-fiction, be careful about derivatives. Make sure you are free to blog/create workbooks/texts, etc. on the topics in the book without having to pay them 15% of your income from monetizing those independent efforts.
- b) If we use subagents or corresponding agents for such purposes, 20% of such gross proceeds from the exploitation of British and so-called "foreign" publication rights and from the exercise of any and all subsidiary rights (both print and non-print) in any territory outside of the United States and Canada. However, if British and/or "foreign" publication rights are controlled and sold by the American publisher, or if we arrange such sales ourselves without using subagents or corresponding agents, our commissions with respect to such proceeds shall be 15% in lieu of 20% thereof.
- 20% is still a common percentage for foreign rights.
- c) 15% of such gross proceeds from the exploitation of motion picture, television, radio, dramatic and all other non-print subsidiary rights in the United States and Canada.
- Ask whether the Agency has had any success in selling film or television rights. They may not be the right partner for this revenue stream.

If the Work is placed with a publisher prior to termination of this agency agreement, this agency and our right to receive commissions hereunder shall be co-extensive with the life of the copyright in the Work in all editions and any renewals thereof.

- This is a lifetime deal once published even if you change publishers. Be sure they're right for you. I can't stress this enough.

All publishers of the Work as well as all publishers and licensees of subsidiary rights therein shall be directed and authorized by you to remit your payments to and in the name of the Agency. Receipt of such payments by us shall be deemed receipt by you.

- The Agency gets the money then sends you your share.
- The definition of subsidiary rights should be spelled out. This language is too vague.

We shall remit payments to you (together with photocopies of all statements received by us), after deducting our commission, not later than ten (10) days after monies have been received by us. Our financial books and records pertaining to your account shall be open to you for inspection and audit purposes upon reasonable notice to us.

In addition to the aforementioned commissions, we shall have the right to be reimbursed out of monies received on your behalf for the following expenses when incurred on your behalf: photocopying, unusual (we cover local submission expenses) shipping by Federal Express or messenger, bank wiring fees if any, faxes and overseas postage in connection with submissions for foreign sales, long distance telephone calls, and copies of the published book when purchased by us for subsidiary rights submissions, and other similar and related charges. Before any charges beyond \$200 are incurred, the agency will obtain your written approval.

Either of us shall have the right to terminate this agreement by written notice to the other party in the event the Work

has not been placed for publication with a publisher acceptable to you in your sole discretion within twelve (12) months from your submission to us of your completed proposal or manuscript (as the case may be).

- Be sure the phrase “in your sole discretion” is included so that you can veto placement of your manuscript with an objectionable publisher. Objectionable for any reason or no reason.

Our commission on the Work handled by us shall nevertheless be payable, as this agreement provides for above, with respect to all literary contracts and literary agreements entered into by you during the term of the agreement, or substantially negotiated and documented during the term of the agreement and executed within one (1) year thereafter, and upon any extensions or renewals thereof and substitutions therefore, and upon any resumptions of any contracts and agreements which may have been discontinued during the term of this agreement and resumed within one (1) year thereafter. If within one (1) year after termination you enter into any agreement concerning any of your Works with a person or firm with whom the Agency had been negotiating on your behalf prior to termination that agreement shall be deemed to have been entered into during the term of this agreement.

- Here’s the problem with the termination provision: if the Agency lands a print publisher then sits on all your other rights (subsidiary, film, foreign language rights, etc.), you have no right to terminate, recover your rights and place them with someone else. You should have the right to recover subsidiary rights if they remain unsold after a certain amount of time, say one year after publication of the print work.
- If the work goes out of *print*, not digital, you should be able to terminate the agreement. No work is ever going to be unavailable digitally ever again.
- Be aware that this provision extends the contract to cover additional works if you close a deal with someone the Agency has introduced to you even if it is not the original work that brought about this contract in the first place.

This agreement shall not be assignable by either party without the prior written consent of the other party.

- This should be clarified to say that if the Agency is bought by another agency, your consent is required to be represented by that new agency.
- There should be a provision that states if the Agency goes bankrupt, this contract automatically terminates.

This agreement is binding on your respective heirs and assigns and will be interpreted according to the laws of the State of _____. If any provision of this agreement becomes void or unenforceable, it shall be deemed omitted and the remaining provisions shall remain in effect.

If the foregoing is acceptable to you, please so indicate by signing your name below.

Cordially,

AGENT

ACCEPTED AND AGREED TO:

AUTHOR

NOTE: This contract annotation is not legal advice on any specific contract. It is an attempt to educate you as to what the terms of a literary agent’s contract mean so you can decide whether you should negotiate for something different.

©2015 Kathryn Goldman
Goldman & Minton, P.C.
Baltimore, Maryland
www.charmcitylegal.com