CHAPTER 10

CONTRACTS: INTRODUCTION AND NEGOTIATING BASICS

You are going to be signing contracts. All your business relationships with publishers, with your agent, with third parties who want to re-use your work, with interview subjects from whom you get releases, and more, are governed by contracts. A contract is an agreement that creates legally enforceable obligations between two or more parties. In the event that one party does not fulfill its obligations under a contract, a court can order that it pay money damages or perform its obligations. In the publishing industry, a contract provides the framework in which the rights and obligations of the author and the other party are set forth. With a few exceptions, contracts generally do not have to be in writing to be fully valid and enforceable, although any lawyer will advise her client that the better practice is to use written and signed (i.e., "executed") contracts for all but the simplest transactions.

This chapter explains the elements of a contract and the general law of contract interpretation as a foundation for later chapters covering specific kinds of publishing agreements. It also gives some advice about negotiating contracts. Negotiating intelligently is essential for contract parties in the "weaker" position, and in a publishing transaction, the party with the weaker hand is more often the writer.

OFFER AND ACCEPTANCE

An offer invites the recipient to enter into a contract. It is a promise to give something of value to the offeree in exchange for something of value from the offeror. It may be accepted by a return promise or sometimes by performance based on the terms of the offer. When you receive a communication from a publisher indicating interest in publishing your work, it should contain basic terms, such as a description of the work, the scope of the rights the publisher wishes to license, payment terms, and the approximate delivery and publication dates. If the inquiry does not outline these fundamental terms, then it is not legally an offer.

For example, if a publisher conveys to a writer, "I will pay you $1,000 for first North American serial rights in your story, 'The Doves of Peace,' for my September issue," it has made an offer. The publisher has promised to purchase in definite terms and the author may accept by agreeing to sell the rights to the story on those terms. By contrast, if the publisher says, "Your story, 'The Doves of Peace,' would be a great addition to my September issue," or "'The Doves of Peace' is worth $1,000," or "I'm going to keep this story for a few weeks," it has not yet made an offer, because there is no binding promise that the author can accept. If the publisher says, "You write a story about X, and we'll agree later about the price," or "You write this story and I'll pay you as I see fit," it has not made an offer because at least one essential term—the price—has been omitted. If the publisher says, "Write a story for my forthcoming anthology, and I will pay you $1,000 for it if I decide to include it," it has made a valid offer.[58]

Acceptance of an offer creates a legally binding agreement; rejection terminates the offer. Generally, a party making an offer is free to revoke or revise it any time before it is accepted. The offeror may also legitimately limit the time for acceptance—"I will purchase your story for publication for $1,000 if you will agree to sell it to me within the next ten days." The offer will expire if not accepted at the end of ten days. If no time limit is

[58] You should generally avoid accepting such an offer. As a rule, courts allow a dissatisfied commissioning party to reject a work even if a reasonable person would have been satisfied. In other words, you would be working on speculation, an arrangement that you should try to avoid. When you take an assignment to write a piece for a periodical, be sure to include a "kill fee" if the publisher decides not to publish. Chapter 12 covers freelance contribution contracts.

given, the offer expires if not accepted after a reasonable period of time has passed. Importantly, an offer is deemed rejected by a counteroffer. For example, if a publisher offers $1,000 to publish a story and the writer counters for $1,250, the original offer of $1,000 is no longer effective. If the publisher rejects the writer's counteroffer, the writer cannot then accept and enforce the terms of the original offer. Of course, in negotiating the terms of an agreement, the process of offer and counteroffer can happen many times as the parties seek a deal they can each live with.

Acceptance occurs when the offeree agrees to the offer. If the publisher offers $1,000 to a writer to deliver a story on a given topic, the writer may accept by responding: "I agree to write and deliver the story for that amount." The end result of the process of offer and acceptance is a meeting of the minds, a mutual understanding of the parties' intentions as manifested in the contract (whether written or verbal). The courts in every state use the same basic rules to interpret contracts. In all jurisdictions, public policy favors enforcing what the parties have agreed to in their negotiations. When interpreting contracts about which the parties later disagree, courts seek first and foremost to determine the parties' intentions at the time of contracting and will examine primarily the language of the contract, often called the "four corners of the agreement." A court will not rewrite the contract, consider industry custom or prior dealings between the parties, renegotiate a bad deal on one side's behalf, or interpret the conduct of the parties with respect to the particular contract, unless the language of the contract is truly ambiguous about the parties' intentions.

For writers, as for any contracting party, these rules mean that you will be held to the bargain you have struck with the other party, whether or not it is standard in the industry or fair and reasonable or if unforeseen events make performance less profitable or more burdensome.

CONSIDERATION

To be valid, every contract requires the exchange of consideration, which is defined as something of value from each party that is given or promised to the other. Consideration is understood to be the inducement to enter into the contract. When the publisher promises to pay $1,000 for a story that the writer promises to write, each party has exchanged consideration with the other in the form of their promises. The consideration must have been

bargained for and agreed upon at the time of entering into the contract. If the parties agree to $1,000 for a story that the author delivers and the publisher says, "Your story is so good that I'm going to pay you an extra $500," the author cannot enforce the second promise, unless some additional bargained for consideration from the author is given.

The only case in which consideration is not required for a contractual obligation to arise occurs when a party relies to her detriment on a promise made. For example, if a patron promises to give money to a writer to buy a computer, and should reasonably know that the writer will rely upon the promise, she cannot refuse to pay the money after the writer has in fact relied on the promise by purchasing the computer. Even though the writer gave or promised nothing of value to the promisor, a court is likely to enforce the promise. This concept is known as "detrimental reliance."

COMPETENCY OF THE PARTIES AND LEGALITY OF PURPOSE

The law will not enforce a contract if both parties are not legally competent to enter it, because in that case there can be no meeting of the minds or mutual understanding. This means that a contract entered into by a person of unsound mind or a legal minor is not enforceable, or is "voidable." A contract made for a purpose that is illegal or against public policy is "void," meaning that it is considered nonexistent in the law.

WRITTEN AND ORAL CONTRACTS

Most contracts need not be written to be fully enforceable by a court.[59] Even when not required, it is usually best to render your agreements in writing to avoid disputes over the terms after you have begun performing your obligations. Reliance on the parties' memories to substantiate

[59] Under the Copyright Act, an exclusive license of a copyright or a right under copyright—which encompasses virtually every book and freelance contribution agreement with traditional publishers—must be in writing signed by the licensor. Nonexclusive licenses, on the other hand, may be granted verbally. In addition, oral contracts for services are enforceable in New York if the services can be performed within one year. If the services cannot be completed in one year, the agreement must be made in a writing containing all essential terms of the contract. Other states might require certain kinds of contracts to be in writing.

the terms of a verbal agreement can leave much to chance, unless there are witnesses to the agreement. A written contract need not be a formal document. An exchange of letters or emails constituting the offer and its acceptance can suffice. Often one party proffers a signed letter agreement, and the other party executes the contract by signing at the bottom of the letter beneath the words ACCEPTED AND AGREED. A check can create or be evidence of a contract. For example, a check from a magazine to a writer that states in the memo line: "Payment in full for first North American serial rights to publish 'Doves of Peace'" could be enforced as such.[60] If both parties have not signed an agreement, then a letter, memo, or email from the party against whom enforcement is sought might be enough evidence of a valid contract. As well, if the parties show from their conduct that they believe a binding contract exists, a court might infer an enforceable agreement. But as previously mentioned, when a court has to interpret a written contract, it will not allow evidence of the parties' subsequent oral promises to vary the terms of the writing. Nor will courts accept evidence of promises made before the contract was signed if these promises do not appear in the written contract. These rules apply unless the written contract was procured by fraud or mistake or cannot be understood without the additional oral statements.

AMENDMENTS

Any contract can be changed subsequent to execution if both parties agree to do so. Amendments are routinely made to extend deadlines or change the subject matter or length of the work to be delivered. Even when the contract is oral, amendments should be made in writing; if the contract is written, amendments to it must be in writing to be enforceable.

WARRANTIES

Caveat emptor—"let the buyer beware"—is the long-standing view of the courts toward agreements to purchase property. Unless specifically agreed otherwise, most property is still considered sold "as is." Warranties reverse

[60] If the check conflicts with your agreement, return it to the publisher and ask for a check that accurately states that the agreed terms.

this presumption. Warranties are express or implied promises on which the purchaser of property, including the publisher of your book or article, may legally rely and therefore may legally enforce. Even if the contract is in writing, some warranties can be given orally. They can be created during negotiations, at the time of making the contract, or, in certain transactions not normally relevant to writers, after entry into the contract.

An express warranty is created when the seller makes a promise relating to the character of or title to the work, if the purchaser relies on them in deciding to purchase. In most book publishing contracts, the author must expressly warrant to the publisher that the work is original to the writer and that it does not infringe any copyright or trademark rights, violate other personal or property rights, or contain any defamatory or unlawful matter. If any of these express warranties prove untrue, the author will be in breach of the contract and legally obligated to the publisher for the losses that result. But sales talk or opinions by a party about the value or merit of the work do not create a warranty. For example, if an author convinces an agent or publisher that her work is "the next Harry Potter," or "is sure to lead to a movie deal," the agent or publisher cannot logically rely on that opinion, so no warranty arises.

An implied warranty is created by operation of law, rather than express representations of the parties, based on the circumstances of the transaction or the relationship of the parties. In some sales (though not in publishing licenses), there is an implied warranty that the seller has title or the right to convey title in the goods being sold. In other sales of complex products or services, courts might find an implied warranty of fitness for a particular purpose. As a result, savvy sellers will make sure their contracts specifically disclaim any such implied warranties, and such disclaimers are enforced.

ASSIGNMENTS OF CONTRACTS

Sometimes one party to a contract may, without permission of the other party, substitute a third party to assume its obligations and/or reap the benefits of the contract. Assignments are not generally enforceable when the contract is based upon the unique skills or persona of one of the parties. For example, in a publishing contract the author may not delegate her obligation to write the manuscript to another author, but she may assign to a third party her right to receive the royalties. On the other hand, a

publisher that is acquired by or merges with another publisher might be allowed, without the author's permission, to assign her contract to the acquiring publisher. A well-drafted contract will set forth the understanding of the parties as to the right to delegate duties or assign rights under the contract.

SUBSTANTIAL PERFORMANCE

Unless the contract specifies that performance obligations must be strictly followed, courts accept substantial performance as adequate and therefore not a breach. For example, if a book contract requires delivery of a manuscript by January 15, delivery by January 20 will constitute substantial performance unless the contract says that "time of delivery is of the essence."[61] On the other hand, in most states, a party who only partially (as opposed to substantially) performs is not entitled to partial payment of the consideration, unless the partial performance substantially benefits the other party who accepts and retains those benefits. If the performance obligations in a contract can be neatly segregated, such as when certain payments are intended for each of a number of specified articles, the author might be able to recover the payment agreed for each partial performance. Otherwise, delivery of only some of a promised work will not entitle a writer to payment under a contract, and in fact will constitute a breach.

NONPERFORMANCE EXCUSED

There are a few situations in which a party's failure to perform her contractual obligations will be excused. The death of an author prior to delivery of a manuscript, for example, does not amount to a breach of contract, so the publisher could not recover the advance from the author's estate. Similarly, because the author's work is personal to her, a disabling physical or mental illness must excuse performance, although some contracts expressly extend the author's time for performance in the event of ill health. If one party to a contract takes action or refuses to act and thereby prevents the other from performing, the aggrieved party's obligation is excused and she has a case

[61] For periodical contracts, strictly meeting delivery deadlines might be essential for the publisher; this is virtually never the case for book contracts.

for breach of contract. Similarly, impossibility might excuse performance, as in the case of an interviewer who cannot conduct the interview because the subject becomes unavailable. Finally, performance is excused if it would be illegal under a law passed after the contract was made.

REMEDIES FOR BREACH OF CONTRACT

If either party fails to perform her obligations under a contract, she could be held liable for the financial loss suffered by the other party that arises from the breach (unless performance is excused). But, unless it is specifically written into the contract, termination (or "rescission") of the agreement is not ordinarily a remedy for a breach. For example, if a publisher accepts an author's manuscript but fails to pay the advance due or to publish as promised, the author could sue for her financial losses, but she could not walk away from the contract and sell her work elsewhere, unless the remedy of rescission for such a breach is expressly provided. Also, contracts often give the nonperforming party a chance to perform her obligations within a certain period of time after notice from the other party before she is liable for breach.

Courts generally award damages only if the nonbreaching party demonstrates its actual loss or measurable detriment because of the breach. The amount of damages awarded typically equals the reasonably foreseeable losses, including out-of-pocket costs and lost profits, actually caused by the breach. Usually, the injured party must take steps to minimize (or "mitigate") the damages. Some contracts specify the measure of damages in advance to avoid the necessity of having to prove them at trial. Courts will enforce these provisions, known as "liquidated damages," if actual damages would be difficult or impossible to establish and the amount specified is not unreasonable or punitive. Many book contracts provide for liquidated damages equal to the amount of the advance paid or due under the contract if the publisher breaches the obligation to publish the manuscript. Some contracts provide that if the author fails to deliver, she must repay the amount of the advance received; whether or not such a term is considered a liquidated damage provision depends on the language used.

SPECIFIC PERFORMANCE

In rare situations, money damages will not adequately compensate for the loss caused by a breach of contract. In those cases, courts might require

the breaching party to actually perform its contractual obligations. Because involuntary servitude is, of course, illegal, contracts to provide personal services cannot be enforced by specific performance. Therefore, the obligation to create a written work cannot be forced on an author, and, for First Amendment reasons, a publisher cannot be forced to publish a work against its will, despite having contracted to do so. But if an author has written a story pursuant to a contract and refuses to deliver it to the contracting publisher, a court might well order specific performance of the author's promise to license the publishing rights to the work; whether it does might depend on whether the contract specifically provides for liquidated damages for such a breach.

When personal services promised under a contract are not performed, a court cannot order specific performance, but it might prohibit the breaching party from giving the promised services to another party. For example, if a famous author agrees to give a lecture series at a certain institution, her failure to honor the contract might be difficult to value in dollars, so a court could enjoin her from giving lectures at any other institution during the time period covered in the first contract.

STATUTES OF LIMITATIONS

The *statute of limitations* is the time period within which an injured party must bring suit to seek redress. After the statute of limitations has expired, an aggrieved party is forever barred from suing for the breach. In cases of breach of contract, the statute of limitations begins at the time of the breach, and varies from state to state. In New York, it is six years, and in California, it is four years for written agreements, two years for oral agreements.[62] The parties may agree in the contract to decrease the applicable limitations period, and such agreements will be enforced. In book publishing contracts, which are frequently based on New York law, the publisher often tries to limit the time in which an author may claim royalty underpayments to two years, in contrast to the six-year statute of limitations for breach of contract.

[62] Many states recognize a longer limitations period for written contracts than for oral or implied contracts.

BAILMENTS

A *bailment* is a situation in which one person gives her property to be held by another person. For example, an author or illustrator might leave a manuscript containing unique artwork at the office of her agent, publisher, or printer. In such cases, where both parties benefit from the bailment, the law requires the person who takes possession of the property to exercise reasonable care in safeguarding it. If that person is negligent and the work is damaged or lost, the other party may recover for the loss. Even if the work has no easily ascertainable market value, damages might still be awarded based on the intrinsic value of the work.

BASIC RULES OF CONTRACT NEGOTIATION

The short-term end product of a negotiation is the written contract embodying your agreement. The long-term result, of course, is your ongoing relationship with the other party over the course of the agreement—which, in a book publishing deal could last a lifetime, or even longer.[63] When it comes to licensing the rights to your work, therefore, the stakes are high.

First, and foremost, remember that you must live with the contract you sign. Many written contracts state outright that the terms expressed in the agreement set forth the entirety of the parties' intentions with respect to the subject matter of the agreement, and that no promises made during the negotiations will be enforced unless they appear in the final contract. Even if a contract does not contain such a "merger clause," courts will interpret most contracts to provide the same thing. Keep in mind, therefore, that if any of your publisher's promises are not set forth in your contract, they are worthless.

Most established book authors have literary agents who will negotiate the terms of book and other licenses on their clients' behalf, but that does not make you a passive participant in the negotiation. Whether or not you have an agent, you should learn some basic negotiation rules. There is much literature covering the art and science of negotiating avail-

[63] Your copyrights last for seventy years after you die; your publishing contracts could stay in force through the entire term of copyright.

able, free online and in many books and journals. Take the time to review some of this advice before engaging in direct negotiations; it will prove a very good investment of your time. Although the advice below refers to book publishing contracts, it applies to any other deal you might negotiate, including with a literary agent, periodical publisher, self-publishing entity, or a collaborator.

To negotiate effectively, you must plan. The more you plan, gather information, and strategize, the better your chances of getting the best possible deal. Negotiation consists of trading concessions with the other side on the various terms of a transaction, and the better you understand and can rank both your own and the other side's priorities, the better you will understand how to make and receive concessions that effectively satisfy both sides' desires—the ideal outcome.

WHAT DOES YOUR PUBLISHER WANT?

Book publishing is a business. Of course your publisher wants to make a profit from publishing your work; in today's industry, that is usually a given. As well, every publisher, even among the "Big Six" North American tradebook publishers,[64] has unique priorities and needs. And importantly, although you are legally dealing with a corporate entity, you are in fact dealing with people, primarily one person—usually the acquisitions editor who has initiated the offer. Perhaps she does not envision your work as a big money maker, but is instead looking for prestige and awards. Or, as with Amazon in its new direct publishing venture, a new publisher or imprint might be willing initially to publish at a loss in order to increase its market presence. Your job, prior to beginning direct negotiations, is to find out what your publisher likely wants to gain from offering to publish your work. If you assume it wants to profit both from publishing your book and from investing in you as an author with a future, you are probably correct.

Beyond these assumptions, it is perfectly acceptable to ask questions during the negotiation to assess the publisher's priorities, although you will

[64] As of this writing, they are Random House, Simon & Schuster, Penguin Group, Macmillan, HarperCollins, and Hachette Books Group, but they might soon become the Big Five—in a troubling sign about the weakness of the trade book industry, Random House and Penguin have announced plans to merge. Each of the big publishers has many imprints, some of which have their own standard form contracts.

probably want to corroborate the information you receive to the extent you can do so.

WHAT DOES THE PUBLISHER BRING TO THE TABLE?

In order to secure for yourself the things you want most from your deal, you should understand the extent to which your publisher can deliver those things, and what it will cost to do so. For example, if you think your work can sell well in the college market and you want to be in a position to earn steady royalties from the work, you should find out whether a publisher that wants your work has a presence in and invests in selling in that market, as well as whether or not it withholds significant amounts of royalties earned against returns. Or, if you have a significant public platform—a well-read blog or frequent appearances on TV or radio—and you want a publisher that is willing and able to leverage your platform by dedicating competent staff and other resources to work with you, discover whether it does so for other writers on its list. If a publisher making you an offer does not normally provide its authors with the things you want, you must take that into account when negotiating.

How do you discover your publisher's needs, strengths, and weaknesses? One easy way is to ask questions in a diplomatic way during the negotiations. Beyond that, if you join a writers organization and subscribe to some of the industry resources set forth in chapter 1, you can readily utilize those resources, which are among the best available. Call on your network of fellow writers and do a lot of research about the publisher and the editors with whom you will be working.

WHAT DO YOU WANT?

Beyond the satisfaction of having their creative work made widely available to the public, professional authors must consider other priorities. Earning a fair financial return from publication of your work is important, so you will need to understand and address the many terms of a book contract that deal with money—the advance, royalties for every territory, format and discount rate, subsidiary rights license fees and accounting. But there are other interests that can be equally or even more important. If you want to work with a particular editor, or to have the freedom to write and publish in a variety of genres with different publishers, or if you have established a reputation in a particular field and want to enhance it by giving copies

of your book away at speaking engagements, you should keep these other priorities in mind as you review an offer and plan the negotiation.

Control over the final product. Editorial control over the final manuscript, the identity of the editor, publication format and pricing, and copy-editing might be more or less important to secure, depending on your publisher's record in these areas. Having any measure of control over any of these elements of your work is not a given, unless stated in the contract.

Future projects. Standard book contracts often contain clauses that require the author to offer her next work to the publisher during an exclusive period and not to publish "competing works" with another publisher. Depending on your plans for future projects, these terms might be acceptable, or not. Even if you have a good experience with the publisher, you will want to limit its rights to option and restrict your future work to comport with your plans. In addition, if sometime after publication, the work is no longer selling, you will want the rights you granted to revert back to you. Dean Koons's first four books had modest sales and eventually went out of print. Before his agent brought him to another publishing house, the agent made sure to get the rights back to those titles. After Koons became a bestselling author, those early books had a very fruitful second life under terms that were much more favorable to him.

Reputation. The prestige and reputation for quality of your editor and publisher might trump short-term financial return for you. Or the converse might be the case; if you are publishing mass market genre fiction under a pseudonym to make some quick cash, the first thing on your list of priorities should be the largest advance you can get.

WHAT DO YOU BRING TO THE TABLE?

In agreeing to license your work for publication, you might think you have nothing more of value to trade. Any publisher or agent will tell you that this is not, and should not be, the case. Your publisher will want to know whether you can sell your book to the public and to other potential licensees, such as foreign publishers, Hollywood, or Broadway. Examine your strengths, your network of contacts, do your best to build a publicity platform, and determine what more you can bring to the table. Doing so will inform the concessions you might ask for, such as a higher discount for copies of the book that you buy from the publisher to sell during speaking engagements. It can also give you more concessions to trade for your

priorities. For example, if you already have interest from an established film producer in your book but you need six months to finish it, you can advise the publisher and offer a share of film production license fees in exchange for a higher advance.

NEGOTIATION TIPS

Know your BATNA. The BATNA—the "best alternative to a negotiated agreement"—is a fundamental concept of negotiation, popularized by Roger Fisher and William Ury in their classic book *Getting to Yes*. It is a simple idea and essential to, even inherent in, any negotiation. If you have no or few other options to reach your ultimate objective, this knowledge will affect your strategy. But think hard about whether you have other options. For example, if your proposal has only recently reached other publishers and you are waiting for responses, or if you have received more than one offer, or if you believe you can self-publish and successfully market your work, then you have feasible alternatives. Knowing your BATNA will strongly inform your strategy and your bottom line, i.e., the point beyond which you will reject the deal.

It can also be tremendously useful to try to ascertain the publisher's BATNA. Perhaps it is obvious that, as buyers in a sellers' market, the publisher has many other choices of works to publish if you cannot come to an agreement. But remember: the fact that it has made you an offer means that it has already invested time and resources into acquiring your work and therefore values it. If the publisher walks away, it loses that particular investment and valuable work.

The more they invest, the more they will invest. It is a fact of human nature that the more a person invests in a product, service or potential return, the more she will be willing to continue investing in it. Watch people who spend a lot of time at particular slot machines at a casino. The longer they spend putting money into "their" machines, the harder it is for them to tear themselves away. It might seem counterintuitive, but if you take your time in a negotiation, causing the other party to invest time and effort toward a successful conclusion, the more that party is likely to continue to invest and the less likely it is to walk away.

Do not accept the first offer. If you posted an item for sale for $100 on Craigslist and received a full-price offer within seconds, would you be

happy, or would you think you had sold yourself short? By contrast, what if a purchaser had offered you $80 and you negotiated to an agreed price of $90? Would you think you had offered the item for too little? That is less likely than in the first scenario, where you actually received more money. Similarly, if a publisher offers you a certain advance and royalty rates and your agent leaps to accept the deal, the publisher will probably think it offered too much.[65] There is no reason in the world why you should immediately accept the first offer, even if you end up at the original numbers offered after some rounds of discussion.

Be aspirational, even unreasonable. The fact that a party wants to make a deal with you means that it sees an opportunity to profit from doing so. That said, when it makes an offer, it is likely to be offering as little as it can without being unreasonable. The publisher knows that the first offer sets the tone and anchors the entire negotiation. Consider this when deciding on your counteroffer. That is not to say your counter should be outlandish, but understand that the publisher's first offer is not likely to be what it is willing to give in the end. A good way to determine your counteroffer is to ask for the basis on which the publisher is making its offer. If it offers a principled basis, your counter can take that into account.

Be creative. A negotiation does not have to end with a "winner" and a "loser" on every issue. If you reach what seems to be an impasse on a particular point, see if you can each gain what is really being sought by approaching the question creatively. Ask yourself, and the other side, what is each party's objective? Perhaps there are other ways, besides money, for each side to come away with at least a portion of what it is seeking.

Control the timing, and negotiate in rounds. Do not let yourself be rushed. You might be anxious for the deal to be signed, especially because you might be getting some compensation upon execution. But keep in mind the tried and true rule that negotiators tend to concede more to close a deal when they believe the window of opportunity is closing. Remember, the publisher has already invested in you and your agreement and no doubt wants to be finished as soon as possible as well. Find out when the publisher plans to publish your work. If it intends to list your book in its catalog soon, then it, too, has a short window to conclude the deal. By the same token,

[65] Do not worry that your agent will do this; even if the book has been rejected by two dozen other publishers, a good agent is savvy enough to understand this basic rule.

it is a mistake to think that one round of offer, counteroffer, and response is all you can expect in the negotiation. Consider the publisher's response to your counteroffer and send another round of comments and requests for changes on terms if you are not satisfied with the response. You are likely to achieve more than is offered in response to your first counteroffer if you ask.