A Guide to Distributor Contracts

Introduction

A distributor contract is an important document.

Whilst it will not ensure that your chosen distributor will market and sell your products and services correctly or represent your organisation to the highest professional standards, a well written contract will allow you to terminate the relationship cleanly and with the minimum of consequential damage should the distributor fail to perform or stop performing.

A well prepared and effective contract will therefore arm the supplier with reasons for terminating and protect it during and after termination.

However, the contract is written, it should contain a series of clauses to invoke against the distributor should the supplier decide that it is no longer suitable and further clauses to allow a smooth, damage-free termination.

Essential elements to include are:

1. Performance

Define an agreed annual sales target. This may be expressed as a number of units shipped from the supplier to the distributor or invoice transaction value in any given period. This sales target may be subdivided into revenue by product group and may have a minimum margin requirement.

2. Activities

Specify all of the required activities that representing your products and services entails – e.g. advertising, mailing, trade shows, use and translation of sales and technical literature, participation in tenders, visits to customers and end users etc

Be clear on the market sectors to be covered and also the sales process to be employed.

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Personnel, competence and training

List the basic qualifications required, how competence must be proved and what access to training will be given.

3. Information

State the data which you expect to be made freely available to you and at what intervals. This will include:

Sales statistics, market share analysis, competitor information, marketing plans, technical data etc.

4. Exclusivity

Be clear on whether the distributor can sell competitors' products and whether it has any exclusive rights to your products and services in any geographic territory or any market sector.

Also, whether it can sell products and services outside of its nominal territory or subcontract to sub distributors with or without your permission.

Finally, be sure to specify whether you can supply other distributors in the same territory and if so under what conditions.

5. Territory

Define it and who is to share it (it could be you, the supplier, or another distributor appointed by you)

6. Products and Services

Carefully define the products and services.

Is it all existing product groups or sub-sets of these groups?

Does the distributor automatically acquire the right to sell newly launched products and services?

Or, does it need to earn the right to do so? For example, through additional training or specific marketing activities – such as market introduction through a trade show or targeted customer visits.

7. Pricing

Always provide a price list with an indication of how end-user prices will be calculated. For example, discounts according to volume sold or case by case pricing.

Ensure that shipping terms are specified – e.g. Ex-works and always state that prices are subject to change and the notice period to be given – if any – should price revisions become necessary.

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8. Payment

Be clear on the precise credit terms and the required method of payment – e.g. electronic bank transfer within 30 days of date of invoice.

9. Returns

Returns should be fully discretionary and only allowable in certain pre-defined circumstances – e.g. manufacturing fault, supplied part out of specification.

Be clear on any deduction to be made against the original invoice value related to restocking, disposal, obsolescence etc.

10. Contract Duration

To ensure flexibility and sustainability, it is advisable to keep this to a period such as one year or in the case of distributors who have acquired significant expertise and are at risk of poaching by competitors, perhaps 3 years.

Standard practice is to have annual "rolling contracts" which auto renew unless terminated by either party with 3 months' notice.

Each year variable schedules such as annual sales targets are renegotiated, and the base contract can then be updated through a variation agreement.

11. Changes

This clause should be used to provide protection against adverse changes that might reduce distributor performance. These might include:

Changes of business ownership, changes in key personnel, changes in services offered, changes in equipment used to support the business.

All changes should be agreed in advance in writing.

12. Jurisdiction

The contract should be drawn up in accordance with the law of the supplier's home country and be interpreted according to that country's legal systems.

Always ensure that any contract is drawn up by a qualified legal practitioner and that it is only signed by duly authorised signatories.

13. Confidentiality

Protect yourself during the course of the agreement and for as long a period as possible thereafter

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14. Proprietary rights

Ensure that intellectual property, trademarks and brands are not transferred to the distributor and that on cessation of the business relationship the distributor ceases to use these in any way in connection with its business

In Summary

This quick guide does not constitute commercial or legal advice.

Before contracting with a distributor, ensure that any documentation is drawn up by a suitably qualified lawyer and fully covers the nature of your specific distributor agreement.

About the Author

Chris Dunn is passionate about the power of digital transformation and customer experience to create brand value, customer loyalty and competitive advantage.

His career stretches back 35 years during which time he has developed fast growing, profitable businesses serving B2B and B2C markets in the UK and internationally.

His company Chris Dunn Consulting Services Limited provides business coaching and management consultancy to companies to help them drive change management and business development.

Chris is a long-standing mentor on the Cambridge Venture Project run by the Cambridge Judge Business School.

He writes a regular blog to pass on business advice as well as posting handy hints and tips through regular posts on LinkedIn and Facebook.

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