

Common Distribution Agreement Terms

Grant

1. Exclusive or non-exclusive?
2. Territory?
3. Who will the distributor be? Entity or individual?
4. Ability to appoint sub-distributors?

Products

5. Ability to sell the full line of products?
6. Does this include all new products?
7. Who has the rights to enhancements and improvements of the product developed after the execution of the agreement?
8. Can the distributor carry competing products? Complementary products?
9. Will there be a minimum sales requirement? A minimum purchase requirement?

10. What is the agreed-upon sales target?
11. Should there be a ramp-up period?
12. Do the products require special licensing or approvals of governmental agencies? If so, who is responsible?

Term

13. What is the length of the term?
14. Can the term be extended? On what terms?
15. What happens if the term ends? Is there compensation for the distributor for its development of the market?

Pricing

16. At what price can the distributor buy the product?
17. At what price can the distributor sell the product? Can the distributor discount the sales price?
18. When can the manufacturer modify the prices at which it sells to the distributor? How much notice is required?

19. Should the distributor get the benefit of the manufacturer's best price?

Warranty

20. What are the manufacturer's warranty terms?
21. Is the distributor required to have products liability coverage? If so, at what level?
22. Should the manufacturer have products liability coverage covering the distributor?
23. What indemnification should the distributor extend to the manufacturer for damages caused by the distributor's actions or failure to act?

Sales Materials & Intellectual Property

24. Who develops the sales materials?
25. Should the distributor be able to develop its own sales materials?

26. The distributor should get a limited license to use trademarks, logos and other intellectual property from the manufacturer to allow the distributor to advertise and market the products.
27. What happens if the intellectual property of the manufacturer is infringed? Whose responsibility is it to police trademarks or file actions to stop infringement?

Supply Terms; Subsidies

28. What sales terms and conditions apply?
29. What is the distributor's credit limit?
30. Will the products be made available to the distributor in the U.S.? Where?
31. Will there be enough products supplied to satisfy demand?
32. Will it be necessary to stock an inventory of the product?

33. What if the manufacturer runs short on certain products? Will the distributor's orders be fulfilled?
34. What about emergencies beyond anyone's control? If not, will there be any other forms of support to the distributor?
35. Will co-op and market development funding be available? If not, any other forms of support to the distributor?

Default & Termination

36. What constitutes a default entitling the parties to damages?
37. Are there cure periods for specified defaults?
38. Can the manufacturer terminate for its convenience?
39. Will there be a sell-off period if the agreement is terminated?
40. Will the manufacturer buy back the products on termination? If so, will there be a restocking charge?

41. Will there be a severance payment due on termination without fault?

Miscellaneous

42. Can the distributor assign the agreement? If so, on what terms?
43. If there is a change of control of either the manufacturer or the distributor, can the agreement be terminated?
44. Does the manufacturer have the right to consent to or reject any assignment or change of control?
45. How will disputes be decided? By consultation? Litigation? Arbitration?
46. Is there an arbitration clause in the agreement? If so, under what rules and where?
47. What law governs the agreement?