

SHORT-FORM CHECKLIST OF BASIC TERMS INCLUDED IN AN INTERNATIONAL DISTRIBUTORSHIP AGREEMENT

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A. Appointment and Products

1. Appointment of Distributor
2. Definition of Territory covered
3. Products covered
4. Exclusivity vs. Non-exclusivity of distributor (direct sales by supplier in territory or appointment of other distributors permitted?)
5. Types of sales permitted by distributor
 - a. Right of distributor to sell competitive products?
 - b. Can distributor sell only directly to end users or can he appoint subdistributors or sell through other distributors or agents?
6. Minimum sales requirements for distributor

B. Prices and Terms of Sale

1. Price and Invoicing
2. Resales by Distributor - - terms
3. Method of Order acceptance or rejection
4. Payment terms - - typically by documentary letter of credit or secured by irrevocable standby letter of credit in international sales
5. Delivery terms - - E.g. C.I.F.; F.O.B. - - See Incoterms published by International Chamber of Commerce

C. Insurance Provisions

D. Force Majeure

E. Warranties; limitation of liability

F. Returns

G. Special Rights and Duties of Distributor

1. Markings or names under which products are to be sold
2. Promotion and advertising
3. Best efforts to sell or minimum sales requirements
4. Training support or technical assistance
5. Maintenance and Repair
6. Reports and Market information to manufacturer
7. Compliance with local laws
8. Right of manufacturer or supplier to periodically inspect pertinent books and records of distributor (especially where distributor has minimum sales requirements or either party receives a commission on sales or other amounts measured by actual sales or operations of the distributor)

H. Compliance with Foreign Corrupt Practices Act

I. Compliance with U.S. Export Control Laws

J. Intellectual Property Rights

1. Warranties or Disclaimers of registration or no infringement by Manufacturer
2. Use of Manufacturer's trademarks or trade names - - licensing of any rights to use and registration obligations in foreign countries
3. Confidentiality Provisions - - protection of trade secrets
4. Injunctive relief to enforce

K. Independent Contractor Provisions

1. Disclaimer of agency or joint venture
2. Indemnity by Distributor

L. Term of Agreement and Renewal and Termination provisions (what happens to unfilled orders, goods shipped on credit, etc. after termination of the agreement?)

M. Dispute Resolution provisions - - typically arbitration under ICC or similar internationally recognized arbitration rules

N. Miscellaneous Provisions

1. Assignment or Transfer Prohibited
2. Separability of Clauses
3. Local Law Compliance obligations
4. Notices by the parties to each other - - how to be given; when effective
5. Entire Agreement in writing; may not be modified or amended except in writing signed by both parties
6. Governing Law
7. Governing Language