

## COMMON ELEMENTS OF A DISTRIBUTION AGREEMENT

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Following is an outline of key elements/provisions you can expect to find in a comprehensive international distribution agreement. Key elements of a domestic distribution agreement will be somewhat more limited but similar. Although comprehensive, this list does not purport to cover all provisions that a distributor or manufacturer will want to see in a distribution agreement. While a distribution agreement is quite different than a licensing agreement, however, it usually will address limited license rights granted to a distributor as needed to advertise and sell product. Expect some repetition in the listed categories of provisions.

- Appointment/Rights Granted and Withheld.
  1. Define products and or services in an exhibit (e.g. current models, upgrades, new models, new product lines, accessories).
  2. Specify limitations of sales to certain defined industry sectors (e.g. oil and gas only OR oil and gas, and marine sectors). (Note: Different terms and conditions could be applied to each sector where rights are granted).
  3. Territory (Note: Can be limited to one or more countries OR multiple countries contingent on Distributor (D) meeting performance levels within stated time periods).
  4. Exclusive or non-exclusive (Note: Exclusivity can become non-exclusivity if performance levels not met OR some countries could be exclusive and others initially non-exclusive).
  5. Term limitations. (e.g. Describe options to renew on same terms if performance milestones are met OR no option to renew).
  6. Termination (will be heavily negotiated based on default which is why performance standards are important)
  7. License rights where appropriate (e.g. limited use of trademarks)
  8. Authorized distributorship. (Optional).
  9. Address ancillary services where appropriate.
- Distributor Obligations/Limitations. Typical requirements and responsibilities:
  1. Yearly marketing plan to be approved by Manufacturer (M).
  2. Advertising budget. (e.g. minimum amount set or approved by M each year; or contributes to advertising budget.)
  3. Advertisements and promotional literature provided by M OR approved by M.
  4. Agreed upon number of D's dedicated sales staff.
  5. Performance standards. (e.g. milestones set for sales activity in each year in each market/territory).
  6. Performance requirements defined in agreement OR thresholds discussed and agreed to before each new year of term.
  7. Penalty for not meeting performance requirements. (e.g. if minimum sales not met for period of time then exclusive rights become non-exclusive in separate countries OR across the board).
  8. Agreement to purchase set amount of initial inventory/services AND/OR set minimum number of units per year.
  9. Agreement as to storage of inventory if applicable (e.g. indoor controlled environment).
  10. Agreement on private labeling/branding (e.g. allow D to put their name on M's products).
  11. Customer list of D is provided to M if D defaults and termination.

12. MAP pricing provision (in countries where it is legal).
  13. Compliance (D must obtain required licenses, permits, registration to do business where selling units).
  14. Agreement on packaging and re-packaging for shipment or re-shipment.
  15. Agreement on drop shipping units OR M ship's to D's warehouse locations.
  16. D must have insurance to cover loss of inventory and non-payment by customer. Note: D usually responsible for non-payment if D provides terms or financing to customers.
  17. D to have ability to demonstrate operation of model unit in warehouse or in field?
  18. Will M give D a unit(s) for demonstration or beta testing purposes at close to cost of production?
  19. Level of technical support to be provided by M in customer demonstrations.
  20. D to keep separate accounting and books for sales in each sector. M to have right to audit.
  21. D cannot sell competing products or attempt to produce competing products.
  22. Limitations on how product can be sold by D. (e.g. no online sales to customers outside of territory; no sales on Amazon, Ebay or Alibaba).
- Intellectual Property (IP) issues.
    1. Temporary license granted to D to use trademarks and IP for sole purpose of selling product.
    2. Other restrictions on use by D (e.g. No modifications by D to software etc.) (Note: M's source code should be protected as priority. M should make all modifications/customizations to software. No reengineering.)
    3. Notification to M by D if discovery of infringement.
    4. M responsible for cost of preventing or stopping identified infringement.
    5. Confidentiality and non-disclosure agreements in definitive agreement (Note: may supersede or require NDA).
    6. Agreement on obtaining international certifications (e.g. ISO).
  - Common Manufacturer Responsibilities
    1. Marketing support incentives OR some sharing of marketing and advertising costs.
    2. Provide detailed wholesale price list with volume and other discounts (Note: Contract production costs are usually covered by M; pricing takes into consideration projected number of units to be sold and other factors).
    3. M to provide marketing materials and training manuals.
    4. M to provide on-site setup/installation and training OR pass this responsibility to Distributor.
    5. Advance notice to D of new products, new models and price changes.
    6. Reasonable efforts to fill orders; guaranty or best efforts on minimum product quantities and order fulfillment times; force majeure paragraph.
    7. Right of D to periodically tour manufacturing facilities.
    8. M has discretion to use initial orders by D to finance buildout or modification of factory AND/OR right outsource some manufacturing.
    9. M's representatives could be required to assist in sales efforts and demonstrations.
    10. Provide independent testing and verified data to support sales and marketing claims.
  - Beta Testing and Demonstration Units (Note: D will likely want unit(s) shipped to a location for beta testing; could ask for free look period based on results. D could also ask for heavy discount on first units shipped to volume customers who want to beta test a unit before ordering multiple units. Expect negotiation on how costs are shared in these and other situations).

- Representations and Warranties of both parties (Fairly standard boilerplate)
- Indemnifications (Usually negotiated heavily)
- Pricing, Returns and Warranty Issues:
  1. Wholesale pricing list by M attached with discounts for volume purchases (Note: could be delayed until more is known about cost of production. Often negotiated as a % of discount off of MSRP.)
  2. Price change policy (cap increase percentage OR no cap). Agree on length of notice before change, timing during year and times per year.
  3. MAP policy where legal.
  4. Address how defective units and parts will be dealt with.
  5. Return policy, if any
  6. Sales leads obtained by M are passed to D OR M has limited right to sell.
  7. Warranty details
  8. Customer service and technical support.
  9. Handling of repairs and returns.
  10. Rules and responsibilities of D relating to second tier distributors of D and D's foreign partners, if M allows.
- Ordering and Shipment
  1. Timing on orders and approximate delivery timeframes.
  2. Payment and process for freight and shipping
  3. Payment terms detailed. (e.g. Terms or full payment on delivery?)
  4. Annual purchase requirements (e.g. if not met, exclusive rights become non-exclusive).
- Term and Termination (Note: Rather than termination for some defaults, the agreement could become non-exclusive and terms are renegotiated). Will cover D right to have option to extend term?
- Miscellaneous Agreement Boilerplate

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