

MODEL CONTRACTS FOR SMALL FIRMS

LEGAL GUIDANCE FOR DOING INTERNATIONAL BUSINESS

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Introduction

This Model Contract encompasses the most commonly accepted provisions governing the **relationship between a Principal and a commercial Agent**.

1. The contract is intended for use in connection with the introduction, promotion, negotiation and conclusion of sales of products or services by an independent Agent on behalf of a Principal, within a defined territory.
2. A main reason to appoint an Agent is that the Principal is unable to carry out the introduction, promotion, negotiation and conclusion of sales of products or services in a particular territory by itself, or is unwilling to make the necessary investments that are required.
3. The Agent may be a physical person or a company. *When the Agent is a physical person, under no circumstances can it be considered as an employee of the Principal.*
4. *The Agent's strength lies in its contacts with customers and its weakness derives from the fact that such customers belong to the Principal.* This explains why, in many countries, such as EU countries, public policy laws aim to protect the Agent's rights, especially upon the termination of the contract.
5. *The Parties are subject to mandatory legal provisions of public policy* that may apply regardless of the law of the contract chosen by the Parties. Such provisions are binding, which means that the Parties cannot ignore or decide not to apply them. These provisions may restrict the validity of certain provisions of the contract, and may allow a court to reduce or extend the obligations of the Parties.
6. Before any discussion takes place between the Parties, it is therefore strongly recommended to check whether the agency contract contemplated may be impacted by such laws.
7. When the agency contract applies to products, the Principal may or may not be the manufacturer of these products. The Principal may be, for instance, a distributor.
8. The *main purpose* of the contract is to establish the level of each party's obligations towards the other, such as the authority of the Agent to commit the Principal (Article 2.2), to receive payments on his behalf (Article 2.3), the obligation for the Principal to accept the orders transmitted by the Agent (Articles 3.4 and 3.5), the information which the Principal should pass on to the Agent, such as the minimum overall orders, any change in the range of products or services, price, etc. (Articles 3.3, 3.7), minimum orders (Article 4), advertising, fairs and exhibitions (Article 5), Internet sales (Article 6), non-competition (Article 7), trademarks and property rights (Article 9), exclusivity (Article 10) commissions (Articles 11 and 12), consequences on

termination (Article 14 and 15) and assignment and appointment of sub-Agents (Article 19).

9. Parties should *review alternatives and options* proposed in order to strike those that are irrelevant to the Parties' common intentions.
10. *Standard provisions* have been incorporated, including financial responsibility of the Agent (optional clause 13), *force majeure* – excuse for non-performance (Article 16) and change of circumstances (hardship) (Article 17).

ITC MODEL CONTRACT FOR AN INTERNATIONAL COMMERCIAL AGENCY

PARTIES:

Principal

Name (name of company)

.....

Legal form (e.g. limited liability company)

.....

Country of incorporation and (if appropriate) trade register number

.....

Address (address of place of business, phone, fax, e-mail)

.....

.....

Represented by (name, position, legal title of representation, address)

.....

.....

Referred to as the "Principal"

Agent

Name (name of company)

.....

Legal form (e.g. limited liability company)

.....

Country of incorporation, trade register number and licence number (if appropriate)

.....

Address (address of place of business, phone, fax, e-mail)

.....

.....

Represented by (name, position, legal title of representation, address)

.....

.....

[Add any further information required e.g. The Parties' fiscal identities]

Referred to as the "Agent"

Collectively "the Parties"

Background

- A. The Principal carries on business in the (field/provision/supply) of *[specify]*.
- B. The Agent undertakes as part of its business the (introduction and) *[delete if not relevant]* the promotion of the sale of products (or services) in relation to *[specify]*.
- C. The Principal wishes to appoint the Agent to (introduce and) *[delete if not relevant]* promote the sale of such products (or services) in relation to the Principal’s business, and the Agent is willing to promote the sale of such products (or services) accordingly, on the terms of the present contract.

Operative provisions

1. Scope of appointment

1.1 The Principal appoints the Agent as its commercial Agent, to promote the sale of the product(s) (or services) within the territory (and in the promotion channels) hereafter defined.

1.2 **Product(s)** (or service(s)). The following product(s) (or service(s)) shall be promoted by the Agent under this contract: *[describe the product(s)/service(s)]*

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1.3 **Territory.** The product(s) (or service(s)) shall be promoted by the Agent under this contract within the following territory: *[describe the territory]*

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-

1.4 **Promotion channel(s).** *[Delete if no relevant]* The product(s) (or service(s)) shall be promoted by the Agent throughout the following promotion channel(s): *[describe the promotion channel(s)]*

-
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Comment: The Parties may wish to limit the scope of the agency contract to certain categories of customers. As regards the identification of the promotion channels, the Parties can either list the categories that fall under this contract (retailers, industrial users, mass distributors) or list the categories to which the contract will not apply.

2. Obligations of the Agent

2.1 In performing its activities, the Agent shall look after the Principal's interests and act dutifully and in good faith.

2.2 The Agent shall (introduce) *[delete if not relevant]* the product(s) (or service(s)) and promote the sale of such product(s) (or services) in the territory (and in the promotion channels) *[delete if not relevant]* in accordance with the terms agreed in this contract. The Agent has no authority to make contracts on

behalf of, or in any way to bind the Principal, but it shall pass any offer received to the Principal.

[Alternative (where the Agent has the authority to bind the Principal): “2.2 The Agent shall (introduce) the product(s) (or service(s)) [delete if not relevant], promote, negotiate and conclude the sale of the product(s) (or service(s)) in the territory (and in the promotion channels) [delete if not relevant] in accordance with the terms agreed in this contract. The Agent shall pass any order received to the Principal.”.]

2.3 The Agent is not entitled to receive payments in the name and on behalf of the Principal without its prior written authorization to that effect. If the Agent has been authorized, it must transmit the payments as soon as possible to the Principal and until then hold them separately on deposit on the Principal's behalf.

2.4 The Agent shall strictly observe the contractual provisions communicated by the Principal and shall bring to the attention of the customers the terms and conditions of sale (particularly the delivery period, price and payment) communicated by the Principal.

2.5 The Agent shall with due diligence keep the Principal informed about its activity, the market conditions and the state of competition. The Agent shall provide all the necessary information in *[specify language]* to the Principal available to it concerning the laws and regulations within the territory that shall apply to the product(s) (or service(s)) as well as its activity. The Agent shall further send every (three months) *[specify any other figure]* a report on its activities.

2.6 The Agent shall perform its activity independently and shall, in no case, be considered as an employee of the Principal.

3. Obligations of the Principal

3.1 In its relation with the Agent, the Principal must act dutifully and in good faith.

3.2 The Principal shall in particular remunerate the Agent according to the commission and terms of payment provided for in this contract.

3.3 The Principal shall inform the Agent before it starts to perform the obligations mentioned in paragraph 2.2 of the minimum overall orders that should be collected in order for the Principal to be able to supply the product(s) (or service(s)).

3.4 The Principal shall in addition inform the Agent without delay of its acceptance, refusal or non-execution of any offers/orders transmitted by the Agent.

3.5 The Principal shall not reject the offers/orders transmitted by the Agent unless:

3.5.1 There are serious doubts, supported by any written evidence, on the solvency of the customer.

3.5.2 The offer does not meet the Principal's expectations in terms of image and standards.

3.5.3 The overall orders collected by the Agent are below the minimum overall orders referred to in paragraph 3.3.

3.6 The Principal's unjustified refusals of offers/orders shall be considered as a breach of the contract by the Principal.

3.7 The Principal shall immediately inform the Agent of any change in its range of product(s) (or service(s)) its prices, conditions of sale or terms of payment as well as of any change of the technical specifications or capacity of supply of the product(s) (or service(s)). Should the Principal expect that its capacity of supply will be significantly lower than the Agent's normal expectancy, it shall inform the Agent without delay.

3.8 The Principal shall provide the Agent, free of charge, with all information and documentation needed for the performance of the present contract, including, but not limited to, the terms and conditions of sale, price lists, technical documents.

3.9 The Principal shall furthermore keep the Agent informed of any relevant communication with or for the attention of the customers in the territory.

4. Minimum orders

4.1 The Agent will have to meet the annual minimum orders objectives set out in schedule 1.

4.2 These objectives will be revised annually [*specify any other period*].

4.3 If, at the end of the year [*specify any other period*], the minimum number/volume of orders applicable to such year is not met by the Agent, the Principal shall be entitled, subject to giving a one month's notice and not later than two months [*specify any other period*] after the end of that year at his choice:

4.3.1 To terminate the present contract, under Article 14;

4.3.2 To cancel the Agent's exclusivity (whenever applicable); or

4.3.3 To reduce the extension of the territory, by excluding the territories where the Agent has made less promotion.

5. Advertising, fairs and exhibitions

5.1 The Parties shall agree on the advertising campaign to be made within the territory.

5.2 The cost of all agreed advertising campaigns shall be at the Principal's expense.

[Alternative: "5.2 The cost of agreed advertising campaigns shall be apportioned between the Parties as follows:

Principal: %

Agent: %]

5.3 The Principal shall supply the Agent, free of charge, with any advertisement content and materials in relation with the product(s) (or service(s)) needed for the performance of this contract.

[Option: “5.4 The Principal shall also authorize the Agent to issue advertising content and materials for use in relation with the product(s) or service(s) and not otherwise. All advertisement content and materials issued by the Agent in relation with the product(s) (or service(s)) shall strictly conform to the Principal’s guidelines and marketing policies.”]

5.5 In any event, the Agent shall ensure that the advertising campaign as well as the advertisement content and materials strictly comply with local rules and regulations.

5.6 The Parties shall participate in the fairs or exhibitions within the territory listed in schedule 2.

5.7 The Principal will bear the expenses incurred for the participation in a fair or exhibition.

[Alternative: “5.7 The cost of the agreed Agent’s participation shall be apportioned between the Parties as follows:

Principal: %

Agent: %”]

6. Internet

The Agent is not authorized to advertise or promote the sale of the products or its activity as Agent of the Principal on Internet without the Principal’s prior written approval.

7. Non-competition

[Comment: The Parties may wish to extend the terms of the non-competition clause after the termination of the contract. In which case, the Parties should take into consideration the mandatory provisions of the EC Directive of 18 December 1986 and other legal systems that may restrict the validity of such a clause and allow the court to reduce the obligations of the Parties.]

7.1 The Agent undertakes not to compete with the Principal or to enter into any business relationship with competitors of the Principal for the entire duration of the present contract.

7.2 In particular, the Agent undertakes not to represent, manufacture, provide or sell, directly or indirectly, in the territory (and in the promotion channels) any product(s) (or service(s)) identical with the product(s) (or service(s)) which compete with the product(s) (or service(s)) without prior written authorization of the Principal.

[Option: “7.3 However, the Agent may represent, manufacture, provide or sell product(s) (or service(s)) which are not competing with the product(s) (or service(s)), provided it informs the Principal in advance of such activity.”]

[Option: “7.4 The Agent shall inform the Principal of any existing agreement, binding the Agent, towards any other product(s) (or service(s)), whether as manufacturer, representative, Agent or retailer, and shall thereafter keep the Principal informed of any such activity. With regards to this undertaking, the Agent declares that, on the date on which the present contract is signed, it represents (and/or manufactures, distributes, sells directly or indirectly), the products (or service(s)) listed in schedule 3. The exercise of such activity by the Agent shall in no case prejudice the fulfilment of its obligations towards the Principal under the present contract.”]

[Option: “7.5 This undertaking shall remain valid during a period of two [specify any other figure] years after the termination of the present contract.”]

8. Restriction of territory

8.1 The Agent shall not solicit orders (or negotiate and conclude contracts) *[delete if not applicable]* outside the territory, unless expressly agreed by the Principal.

8.2 The Agent shall notify the Principal of any inquiry received from outside the territory. Such notification shall not entitle the Agent to any commission.

9. Trademarks and property rights

9.1 The Principal hereby grants to the Agent the right to use the trademarks, trade names or intellectual property in relation to the product(s) (or service(s)) for the purpose of exercising its rights and performing its obligations under this contract.

9.2 The Agent shall use the Principal’s trademarks, trade names or intellectual property in relation to the product(s) (or service(s)) in the form and manner specified by the Principal and in the Principal’s sole interest, and not otherwise.

9.3 Any use of the Principal’s trademarks, trade names or intellectual property on the Agent’s letter paper, on advertisement materials or on any other materials addressed to third parties or on Internet shall require the prior consent of the Principal.

9.4 The Agent agrees neither to register, nor to allow or favour the registration by third parties of any of the trademarks in the territory. The Agent further agrees not to include the trademarks in its own trade or company name.

9.5 The Agent shall notify the Principal of any infringement of the Principal’s trademarks, trade names and symbols or any other property rights it may become aware of.

9.6 The Principal warrants to the Agent that the products as well as the Principal’s trademarks, trade names or any other symbols do not infringe intellectual any property rights of any third parties in the territory.

9.7 In this respect, the Principal undertakes to hold harmless the Agent from any and all costs, losses, damages and liabilities which may occur due to trademarks infringement by the use of the Principal’s trademarks, trade names or any other symbols by the Agent.

10. Exclusivity

[Strike out option and alternative if not relevant]

The Principal grants exclusivity to the Agent, which means that it undertakes not to appoint other Agents within the territory (and in the promotion channels) for the duration of the present contract.

[Option (Direct sales by the Principal): “However, the Principal retains the right to directly market or sell the product(s) (or service(s)) in the territory (and in the promotion channels), including via Internet.”]

[Alternative (No exclusivity): “The Principal does not grant exclusivity to the Agent, which means that it reserves the right to appoint other Agents within the territory (and in the promotion channels) for the duration of the present contract.”]

11. Agent’s commission – right to commission

11.1 Unless when the right to commission has been expressly excluded by the Parties, the Agent is entitled to the commission provided for in schedule 4 on all sales of the product(s) (or service(s)) made within the territory throughout the duration of this contract, whether such sale was generated by the Agent or not, in accordance with Article 10.

[Option (No commission on direct sales): “However, the Agent shall not be entitled to commission on any direct sales of the product(s) (or service(s)) made by the Principal within the territory throughout the duration of this contract.”]

[Alternative (When exclusivity has not been granted to the Agent): “11.1 Unless when the right to commission has been expressly excluded by the Parties, the Agent is entitled to the commission provided for in schedule 4 on all sales of the product(s) (or service(s)) made within the territory throughout the duration of this contract which have been generated by the Agent.”]

[Option 11.2 (Commission on post contractual sales): “The Agent shall also be entitled to commission on sales concluded on the basis of offers/orders transmitted to or received by the Principal after the termination of this contract, provided the Agent informed the Principal in writing of the pending negotiation upon termination of the contract.”]

11.3 The Agent shall acquire the right to commission as soon as the orders have been accepted by the Principal.

[Alternative: “11.3 The Agent shall acquire the right to commission upon full payment by the customer(s) of the invoiced product(s) or (service(s)). In case of partial payment by the customer(s), made in compliance with the sales contract, the Agent shall be entitled to a proportional commission.”]

11.4 In any event, no commission shall be due in respect of offers/orders accepted by the Principal, which could not be executed for reasons beyond the Principal’s control.

12. Method of calculating commission and payment

12.1 The commission shall be calculated on the net amount of the sale invoiced by the Principal to the customers, clear of any additional charges and of all taxes of any kind, and provided that such additional charges and taxes are separately stated in the invoice.

12.2 The commission shall cover any and all costs and expenses incurred by the Agent in fulfilling its obligations under the present contract.

12.3 The commission shall be calculated in the currency of the contract of sale on which the commission is payable, unless otherwise agreed by the parties.

12.4 Any taxes imposed in the Agent's country on its commission shall be for the Agent's account, including whenever applicable, any withholding taxes payable by the Principal on the Agent's behalf.

12.5 The commission shall be paid to the Agent not later than on the last day of the month following each quarter [*specify any other period*] in which it became due.

12.6 If payment is not made on the due date, the Agent shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of [*specify*] % per annum.

[Comment: The Parties should take into consideration that in some legal systems payment of interest is unlawful, or is subject to a legal maximum rate, or there is provision for statutory interest on late payments.]

12.7 The Principal shall provide the Agent with a statement of the commissions due in respect of each quarter and shall set out all the business in respect of which such commission is payable.

12.8 The Agent shall be entitled to demand that it be provided with all the information, and in particular an extract from the books, which is available to its Principal and which it needs in order to check the amount of the commission due.

13. Financial responsibility (Option)

[Comment: Should the Parties wish to include a Del Credere clause, they should pay attention to the legal provisions applicable in the country where the Agent is established, as some countries have mandatory requirements on Del Credere obligations.]

13.1 The Agent shall satisfy itself, with due diligence, of the solvency of customers whose orders are transmitted to the Principal. The Agent shall not take orders from customers whose financial standing and capacity of meeting their financial commitments towards the Principal are questionable without informing the Principal in advance of such a fact.

[13.1 (Option) The Agent shall act as a Del Credere Agent according to the conditions stated in schedule 5.

In this respect, the Agent hereby undertakes to reimburse to the Principal the total (or partial) amount of the unpaid sums that the Principal is entitled to receive from customers and which have not been paid for reasons for which the Principal is not responsible.

The Del Credere obligation does not cover the expenses incurred by the Principal for recovering its credits.]

Term, termination and consequences of termination

14.1 This contract shall enter into force at the date of its signature (or at the date of the latest signature if signed by the Parties at different dates) and shall continue for an indefinite period. Each party may terminate the present contract at any time by giving a *[specify figure]* months written notice to the other party.

[Alternative (Fixed term): "14.1 This contract shall enter into force at the date of its signature (or at the date of the latest signature if signed by the Parties at different dates) and, shall expire on [specify date]."]

14.2 If the Agent is a physical person, this contract will end automatically at the death of the Agent.

14.3 Each party may terminate this contract with immediate effect by written notice in case of:

14.3.1 A substantial breach by the other party of its obligations which could be qualified as gross negligence or wilful misconduct;

14.3.2 Exceptional circumstances beyond the control of the Parties, which render the continuation of this contract impossible;

14.3.3 Failure to remedy to any other breach by the other party of its obligations under this contract, after a 15 days written notice to remedy to such breach.

14.4 The termination of this contract for any reason shall not affect:

14.4.1 Each party's accrued rights, remedies or liabilities, including payments due at the effective date of termination; or

14.4.2 The application of provisions of this contract that are meant to survive after the expiration of this contract.

14.5 At the end of this contract, the Principal shall pay all and any commissions due to the Agent.

14.6 At the end of this contract, the Agent shall return to the Principal any advertising material and other documentation provided free of charge to the Agent as well as any products and samples which are still in its possession.

15. Indemnity or compensation on termination

[Comment: In some jurisdictions there exist mandatory legal provisions of public policy that are binding upon the Parties. Such is the case in the European Union where the EC Directive 86/653/EEC of 18 December 1986 grants the Agents the right to claim a termination indemnity subject to certain conditions.]

15.1 At the end of this contract, the Agent will be entitled to receive a termination indemnity which will be equivalent to (one or two years' commissions *[specify]* based on the average annual commissions paid to the Agent over the preceding 3 years.

15.1.1 In order to receive this termination indemnity, the Agent will have to notify the Principal in writing its willingness to receive same within one year after the end of the contract. Failure to do so will result in the Agent losing its right to receive the termination indemnity.

15.1.2 The termination indemnity shall be due in the event of the Agent's death and payable to the Agent's heirs.

15.1.3 The Agent shall have no right to receive the termination Indemnity in the following cases:

- When the Principal has terminated the contract for the reasons set out in paragraph 14.3 above.
- When the Agent has terminated the contract, unless such termination was caused by the breach of the Principal's obligations, or by the age, infirmity or illness of the Agent, which render the continuation of this contract impossible.
- When, with the agreement of the Principal, the Agent assigns its rights and duties under the present contract to another person.

[Alternative: "15.1 No right to indemnity (inconsistent with the EC Directive of 18 December 1986 and mandatory legal provisions of countries which have implemented the EC Directive or which have adopted similar provisions): No termination indemnity or compensation shall be payable to the Agent at the end of this contract."]

15.2 The above provision shall not affect the Agent's right to claim damages for breach of contract by the Principal.

16. Force majeure – excuse for non-performance

16.1 "Force majeure" means war, emergency, accident, fire, earthquake, flood, storm, industrial strike or other impediment which the affected party proves was beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this contract or to have avoided or overcome it or its consequences.

16.2 A party affected by *force majeure* shall not be deemed to be in breach of this contract, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under this contract to the extent that the delay or non-performance is due to any *force majeure* of which it has notified the other party in accordance with Article [16.3]. The time for performance of that obligation shall be extended accordingly, subject to Article [16.4].

16.3 If any *force majeure* occurs in relation to either party which affects or is likely to affect the performance of any of its obligations under this contract, it shall notify the other party within a reasonable time as to the nature and extent of the circumstances in question and their effect on its ability to perform.

16.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by *force majeure* for a continuous period in excess of three [specify any other figure] months, the other party shall be entitled to terminate this contract by giving written notice to the party affected by the *force majeure*.

[Alternative: "16.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by force majeure for a continuous period in excess of three [specify any other figure] months, the Parties shall negotiate in good faith, and use their best endeavours to agree upon such amendments to this contract or alternative arrangements as may be fair and reasonable with a view to alleviating its effects, but if they do not agree upon such amendments or arrangements within a further period of 30 [specify

any other figure] days, the other party shall be entitled to terminate this contract by giving written notice to the party affected by the force majeure.”]

17. Change of circumstances (hardship)

[Comment: The Parties should be free to consult each other in the event of a major change in circumstances – particularly one creating hardship for a particular party. However, an SME should only include the option at the end of Article 17.4 (right to refer to the courts/arbitral tribunal to make a revision or to terminate the contract) if (i) the SME considers that it is not likely to be used against that party’s interests by a party in a stronger tactical position or (ii) the right to refer to a court/tribunal is already an existing right under the applicable governing law in the event of hardship.]

17.1 Where the performance of this contract becomes more onerous for one of the Parties, that party is nevertheless bound to perform its obligations subject to the following provisions on change of circumstances (hardship).

17.2 If, however, after the time of conclusion of this contract, events occur which have not been contemplated by the Parties and which fundamentally alter the equilibrium of the present contract, thereby placing an excessive burden on one of the Parties in the performance of its contractual obligations (hardship), that party shall be entitled to request revision of this contract provided that:

17.2.1 The events could not reasonably have been taken into account by the affected party at the time of conclusion of this contract;

17.2.2 The events are beyond the control of the affected party; and

17.2.3 The risk of the events is not one that, according to this contract, the party affected should be required to bear.

17.3 Each party shall in good faith consider any proposed revision seriously put forward by the other party in the interests of the relationship between the Parties.

[Option [delete if not applicable or not enforceable under the law governing the contract – see Comment at beginning of Article 17]:

“17.4 If the Parties fail to reach agreement on the requested revision within [specify time limit if appropriate], a party may resort to the dispute resolution procedure provided in Article 25; the [court/arbitral tribunal] shall have the power to make any revision to this contract that it finds just and equitable in the circumstances, or to terminate this contract at a date and on terms to be fixed.”]

18. No partnership

Nothing in this contract shall be deemed to constitute a partnership in law between the Parties.

19. Assignment and appointment of sub-Agents

[Comment: Some countries have mandatory requirements on the appointment of sub-Agents. Therefore the Parties should check the situation under the relevant law before deciding which option to choose.]

19.1 This contract is personal to the Parties and *[include only where relevant, except to the extent necessary for the collection of outstanding bills through a factoring Agent,]* neither party shall without the prior written approval of the other:

19.1.1 Assign, mortgage, charge or otherwise transfer or deal in, or create any trust over, any of its rights; or

19.1.2 Subcontract or otherwise delegate the whole or any part of its rights or obligations under this contract to another person.

[Alternative: 19.1 The Agent may subcontract or otherwise delegate the whole or any part of its activity or any other of its obligations under this contract to a third party. The Agent shall be responsible for the activities of its sub-Agents or delegates.]

19.2 The Parties agree not to engage sub-Agents, delegates and/or employees of the other party.

20. Notices

20.1 Any notice under this contract shall be in writing (which may include e-mail) and may be served by leaving it or sending it to the address of the other party as specified in Article 20.2 below, in a manner that ensures receipt of the notice can be proved.

20.2 For the purposes of Article 20.1, notification details are the following, unless other details have been duly notified in accordance with this Article:

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21. Entire agreement

21.1 This contract sets out the entire agreement between the Parties. Neither party has entered into this contract in reliance upon any representation, warranty or undertaking of the other party that is not expressly set out or referred to in this contract. This Article shall not exclude any liability for fraudulent misrepresentation. *[Option, add where relevant: "This contract supersedes any previous agreement or understanding relating its subject matter".]*

21.2 This contract may not be varied except by an agreement of the Parties in writing (which may include e-mail) (add where Article [17.4] or equivalent is included: Or in accordance with Article [17.4].)

22. Effect of invalid or unenforceable provisions

If any provision of this contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this contract shall continue to be valid as to its other provisions and the remainder of the affected provision, unless it can be concluded from the circumstances that, in the absence of the provision found to be null and void, the Parties would not have concluded this contract. The Parties shall use all reasonable efforts to replace all provisions found to be null and void by provisions that are valid under the applicable law and come closest to their original intention.

23. Confidentiality

23.1 Both parties understand and acknowledge that, by virtue of the present contract, they may both receive or become aware of information belonging or relating to the other party, its business, business plans, affairs or activities, which is confidential and proprietary to the other party and/or its suppliers and/or customers and in respect of which they are bound by a strict duty of confidence (“Confidential Information”).

23.2 In consideration of such Confidential Information being disclosed or otherwise made available to either party for the purposes of the performance of the present contract, both parties hereby undertake that they will not at any time, either before or after the termination of the present contract, and either directly or indirectly, disclose, divulge or make unauthorized use of any Confidential Information, except to the extent to which such Confidential Information:

23.2.1 Is publicly known at the time of its disclosure or is being made available to them.

23.2.2 After such disclosure or being made available to them, becomes publicly known otherwise than through a breach of this undertaking.

23.2.3 Is required by law, regulation or order of a competent authority (including any regulatory or governmental body or securities exchange) to be disclosed by one of the Parties, provided that, where practicable, the other party is given reasonable advance notice of the intended disclosure.

23.3 Upon the earlier of a request from the other party or the termination of this contract, each party shall return to the other all documents or records in any medium or format containing any Confidential Information which are in its possession or control and will not retain any copies of them.

23.4 This undertaking, and the obligations contained herein, will continue without limit of period.

[Add where relevant:]

24. Authorizations

24.1 This contract is conditional upon the following authorizations first being obtained *[specify the authorization(s) or other conditions required e.g. of governmental or regulatory authority]*.

24.2 The relevant party shall use all reasonable efforts on its part to obtain such authorizations and shall notify the other party promptly of any difficulty encountered.

25. Dispute resolution

Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of *[specify the arbitration institution]* by *[specify the number of arbitrators, e.g. sole arbitrator or, if appropriate, three arbitrators]* appointed in accordance with the said rules. The place of arbitration shall be *[specify]*. The language of the arbitration shall be *[specify]*.

[The following are alternatives to a specified arbitral institution under Article 25:

Alternative 1: Ad hoc arbitration

*“Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of UNCITRAL *[specify other rules]* by *[specify the number of arbitrators, e.g. sole arbitrator or, if appropriate, three arbitrators]* appointed by *[specify name of appointing institution or person]*. The place of arbitration shall be *[specify]*. The language of the arbitration shall be *[specify]*.”*

[Alternative 2: State courts

Any dispute, controversy or claim arising out of or relating to this contract, in particular its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled by the courts of (specify place and country) which will have exclusive jurisdiction.”

26. Applicable law

[Specify national law] law shall apply to the contract.

[Add where relevant:] If the Agent has its place of business and/or performs its activity within the European Union, the mandatory provisions of the EC Directive of 18 December 1986 shall also apply.

Schedule 1: Minimum orders

(Article 4.1)

Schedule 2: Fairs and exhibitions

(Article 5.2)

The parties shall participate in the following fairs or exhibitions within the territory:

The Agent	The Principal

Schedule 3: List of non competing products (or service(s)) represented, manufactured, distributed or sold by the agent

(Article 7.4)

At the time of the conclusion of the present contract, the agent represents (manufactures, distributes or sells) the following product(s) (or services):

.....
.....
.....
.....
.....

Schedule 4: Agent's commission

(Article 11.1)

Schedule 5: Del Credere (Optional)

(Article 13.1)

The agent undertakes a Del Credere obligation according to the terms and conditions stated hereafter

1 In this respect, the agent shall be responsible for:

[Option 1: Any transaction transmitted by the agent.

Option 2: Only for the transactions for which the Del Credere undertaking has been expressly agreed on a case-by-case basis.]

2 In case of non payment by the customers, the agent hereby undertakes to reimburse to the principal the following amount:

[Option 1: The total amount of the sums not recovered.

Option 2: No more than % [specify figure] of the sums not recovered.

Option 3: No more than the commission which would be due on such transaction.

Option 4: No more than times [specify figure] the commission which would be due on such transaction.]

3 The Del Credere obligation does not cover the expenses incurred by the principal for recovering its credits.

4 The agent shall be entitled to an extra commission of % *[specify figure]* on all business on which the agent has granted a Del Credere.

5 No Del Credere is due if the loss is due to reasons for which the principal is responsible.

DATE AND SIGNATURE OF THE PARTIES

Agent

Principal

Date.....

Name.....

Signature

Signature