

10 Tips: Distributor Contracts 2021

When was the last time you reviewed your distributor contracts? Fortunately, both brand owners and distributors only dedicate time to these documents at the start of a relationship or when the end is near. View our ten tips on handling distributor contracts.

1. Contract, Letter, or Handshake deal?

Most companies maintain a mix of these type of relationships. This is normal, although most wish to standardize the model. The rule of thumb is that the “more money you spend, the more detailed the contract you need.” A simple two page letter of understanding may be appropriate for a small business or a handshake commitment in situations where the distributor “buys and resells.” However, fully supported brand launches and business management of a global brand usually requires a detailed contract to protect both parties.

2. Sole Versus Exclusive Distributor

Most distributors demand country exclusivity. This is standard, but may cause problems if the region is subject to inbound shipments from global customers, e-commerce, or grey market traders. A compromise is to offer a contract as the “sole” distributor, providing protection from the manufacturer appointing multiple partners in a country.

3. Distributors are Customers

At contract time, some manufacturers fail to remember that distributors are customers, buying your product and reselling to all local retailers. Suppliers may forward “one way” contracts that are biased to terms favoring the manufacturer. Would you send a contract like that to Kroger, Carrefour, or Tesco? Key is to strike a reasonable balance favoring commercial sensibilities.

4. E-Commerce Implications

Many distributor contracts were executed before the advent of e-commerce. Revised agreements may be necessary incorporating e-commerce service requirements: items, pricing, inventory, metrics, channel exclusivity.

5. Local Law Dominates

Overseas companies should have their contract reviewed by a local law firm to guarantee compliance with local regulations. For example, in Puerto Rico and Belgium, distributor (agent) protection laws supercede any contract language.

6. Point of Arbitration

Normally, the brand owner automatically assigns his home country as a point of arbitration for any disputes. In some cases, both parties select a neutral country like Switzerland. A global corporate counsel once taught me that ultimately any dispute will need to be resolved in the distributor’s home country. For example, a USA company can sue a distributor in a USA court. It is unlikely that the distributor will hire a USA lawyer or even show up. The USA court may enter a judgement, but the brand owner still needs to go to the distributor’s country for enforcement.



7. Notification of Contract Termination

Standard contracts appear for two or three years with provisions for automatic renewal. Distributors fight for long lead times; a loss of brand can represent a major disruption. From a brand owner’s side, would you want a terminated employee working for you for six months or one year? I prefer three months notification, but that can also backfire if the distributor resigns your business.

8. Loss of Major Principal

Sadly, I have witnessed distributor bankruptcies because they were doing “too well.” A distributor grows the brand to a size where the manufacturer decides to take the brand back and form a subsidiary. The distributor scrambles, but sometimes they need to lay off more people and causes a rapid exit of other brands. 2021 contracts should require distributors to inform you within 10 days of notification (not effective date) of any loss of principal representing ten percent or more of their business.

9. Global/Regional Customers

Large players like Walmart, Costco, Amazon, and Carrefour can be difficult to manage. They demand best pricing system wide or threaten to trans ship from other locations. In some cases, these retailers may demand to “buy direct.” In this case, you can add an “indent” clause permitting this practice while compensating the distributor for local services such as merchandising.

10. Late Payments & Currency Exchange Rate

A distributor that pays late signals financial difficulties. Include a clause that allows you the option to consider the contract in default with payment delays beyond 45 days or with frequent problem payers. The benchmark for calculating currency exchange rates should be specified in the contract. I have seen cases where a distributor assigns a five to ten percent benefit in his favor to protect against the possibility of currency swings.

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