



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

International Distributor Agreement Checklist

By Delbert E. Winn*

This list contains a sample of the items to consider when drafting an international distribution agreement.

DATE OF AGREEMENT

MANUFACTURER

Legal corporate name

Address

Phone number

Fax number

E-mail address

DISTRIBUTOR / DEALER

Legal corporate name (individual, sole proprietorship, partnership)

Address

Phone number

Fax number

E-mail address

EFFECTIVE DATE (a) could be date recited above, (b) if agreement is contingent on any government approvals — effective date may be when all required approvals are received and/or (c) if agreement is contingent on Manufacturer's approval - effective date may be when Manufacturer's approval is granted

EXCLUSIVITY / NON-EXCLUSIVITY

Limitations (time, territory, customer)

Conditions for conversion

Competitor's products

TERRITORY

Adjoining territories

Multi-national customers

Other Distributor sales

PRODUCTS (describe or refer to exhibit)

Exclusions to Manufacturer's current product line

Future products

DUTIES AND OBLIGATIONS OF DISTRIBUTOR

Purchase demonstration product / equipment

Maintain appropriate place of business / service facilities

Sales force - trained / English speaking

Resale

Sales Promotion

Sales Forecasts / reports (frequency)

Customer Service - trained / English speaking

Sales outside Territory

Minimum orders (frequency)

Improvements, translations, inventions, modifications to products

Warranty / post-warranty maintenance

Payment / penalties

Marking products

Records

Warranty

Out of territory services

RESTRAINTS ON DISTRIBUTOR

Anti-trust laws (check)

Geographical

Resale price

Competitor products

DUTIES AND OBLIGATIONS OF MANUFACTURER

Training

Sales support

Technical / service support

Product development and modification

Warranty / post-warranty maintenance

Availability of product / support / spares / updates / documentation

PRODUCT SALES

Prices (describe or refer to exhibit)

Price changes

Fixed (state period)

Change upon notice

Automatic escalator

Commission (describe or refer to exhibit)

Discounts for volume (describe or refer to exhibit)

Purchase orders (attach sample form as exhibit)

Minimum orders

Cancellation (or change) of purchase orders / penalties

Preparation of customs / export documentation

Governmental permits

Payment terms

Currency

Fluctuation protection

Documentation (translations, reproduction)

Discontinuation / refunds / credits

Spare parts

Returns

Technical / service support

Warranty / post-warranty maintenance

Software license, resale and product reproduction

Third party sales

Promotion allowances

Audit of books and records

SHIPPING

Packaging

Delivery terms (title, risk of loss - INCOTERMS)

Delivery time / late delivery consequences

Returns

CONFIDENTIAL INFORMATION / NON-DISCLOSURE

Definition of confidential information

Terms

Exceptions

INDUSTRIAL PROPERTY RIGHTS

Use of trademarks, tradenames, copyright etc.

Filing

Assignment

Indemnities

Ownership of Distributor's modifications / improvements

Joint product development

Licenses (scope)

RELIEFS AND LIABILITY

Force Majeure

Limitation of liability

DISTRIBUTOR'S DISCLAIMERS / INDEMNITIES

Not sole business

Not sole source of income

TERM AND TERMINATION

Term of agreement (initial / renewal)

Extensions

Mutual agreement

Single party option

Automatic (frequency)

Premature termination

Without cause

With cause

Insolvency / bankruptcy

Non-payment

Failure to meet sales objectives

Failure to comply with material obligation

Uncorrected breach (time)

Failure to obtain required governmental approvals

Enumerated triggers

Opportunity to cure

Change of ownership / control

Effects of termination

Disposition of inventory

Settlement of open accounts

Compensation

Customer account transition

GENERAL (some items may be covered elsewhere in agreement or discretionary)

Governing law

Confidential information / non-disclosure

Notices

Fax / e-mail (follow with executed copy)

Additional parties to receive

Delays / Force Majeure

Arbitration / dispute settlement

Location

Who pays

Language

Conduct of business (warranties against corrupt practices)

Assignments and transfers

Independent contractor relationship

Severance of invalid provisions

Amendments and modifications

Waivers

Public announcements

Export administration restrictions

Conflicts of interests

Time of essence

Entire agreement

Titles / subtitles / captions / headings

Default interest

Governing language

Sole understanding / entire agreement

Counterpart execution

Survival of terms

Inurement

Taxes (including V.A.T.)

Additional provisions (attached as exhibit)

SIGNATURES / ACCEPTANCE BY MANUFACTURER

Names printed

Titles

Dates of execution

EXHIBITS

Products and specifications

Prices

Discount schedule / commission calculation chart

Spare parts (required to stock)

Software license

Manufacturer's product warranty

Sample Purchase Order form

Agency agreement (for collection of fees on behalf of Manufacturer)

Additional provisions (if applicable)

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* Del Winn is Vice President and General Counsel for Authentix Network, Inc., and has traveled to 36 countries, negotiated and drafted distributorship, value added reseller and sales representative agreements in 48 countries and established equipment manufacturing joint ventures in 5 countries.

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