



# Model Distribution Contract

EU Competition requirements and law applicable to  
Distribution

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# Model Distribution Contract

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Between *[full legal entity name, address of registered office, registered with/in and having registration no, duly represented by ...(Name of authorized signatory)]*

.....  
.....

"the SUPPLIER",

AND

*[full legal entity name, address of registered office, registered with/in and having registration no, duly represented by ...(Name of authorized signatory)]*

.....  
.....

"the DISTRIBUTOR",

made on *[insert]* day of *[insert month]* *[insert year]*

Hereinafter referred to individually as a 'Party' and collectively as the 'Parties'.

**WHEREBY IT IS AGREED as follows,**

## 1. DEFINITIONS

The following terms shall have the meaning given below,

- 1.1. Effective date of the contract – *[insert date]*
- 1.2. "Products" shall mean those products listed in Schedule 1.
- 1.3. "Products specifications" – relevant specifications for the Products as set out in Schedule 2.
- 1.4. "Territory" shall mean those areas listed in Schedule 3.
- 1.5. "Intellectual property rights" shall mean trademarks and trade names and any other intellectual and industrial property rights related to the Products at any time during the term of this contract *[Listed in Schedule 4]*.
- 1.6. "Applicable laws" - means all laws that are applicable to this contract or the activities detailed under it as the same may be amended and in force from time to time.
- 1.7. "Confidential information" means any information disclosed by one Party to the other under or in connection with this contract which should reasonably be considered to be confidential or proprietary given the nature of the information and the circumstances of the disclosure. Confidential information does not include information that: (a) is or becomes generally known to the public through no fault of or breach of this contract by the receiving party (b) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality (c) is independently developed by the receiving

- party without use of the disclosing party's confidential information or (d) the receiving party rightfully obtains from a third party without restriction on use or disclosure.
- 1.8. "Order" – issued by the Distributor to the Supplier for delivery of the Products as under this contract.
  - 1.9. "Schedule" – refers to a Schedule to this contract.
  - 1.10. "Force majeure" - an event beyond the reasonable control of the party, including but without any limitation, an act of God, war, riot, public disorder, economic sanctions, fire, flood, explosion and epidemic.
  - 1.11. "Latent defect" - means a defect which exists at the time of acceptance but cannot be discovered by a reasonable inspection on receipt of the Products at delivery.

## **2. APPOINTMENT**

The Supplier has selected the Distributor on the basis of the Distributors experience, sales infrastructure and qualifications, including the Distributors reputation for proper business conduct and general compliance with applicable laws.

The Supplier appoints the Distributor as its [*Exclusive/ Non-exclusive*]<sup>1</sup> Distributor, who accepts to purchase, market, distribute and sell the Products in the territory based on the terms and conditions expressed in this contract.

## **3. GENERAL PRINCIPLE OF GOOD FAITH**

Parties will carry out their obligations under this contract in good faith and in accordance with the general principle of fair dealing; the provisions of this contract and any statements made by the Parties in connection with the contract shall be interpreted in good faith.

## **4. DISTRIBUTOR STATUS**

- a. The Distributor shall not represent itself as an agent of the Supplier and shall have no power to bind or obligate the Supplier in any contract or obligation.
- b. This contract does not intend to constitute, create, give effect or otherwise recognize the relationship of employer and employee, franchisor and franchisee, a joint venture, partnership or formal business entity of any kind. Each Party shall be at all times and for all purposes an independent contractor and neither Party shall have any authority to create any obligation of any kind, expressed or implied, on behalf of the other Party except as and to the extent provided for in this contract.

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<sup>1</sup> This being a Model contract - based on the choice of exclusive or non-exclusive, clauses mentioned below can be used, modified or removed.

- c. The Distributor shall operate in the Distributor's own name and on its own behalf in the Territory as specified in this contract. The Distributor shall not, accordingly, be entitled to act in the other Party's name or on the other Party's behalf without the latter's written authorization beforehand.
- d. In the case where the Distributor is unwilling or unable to act as buyer and re-seller it may write to the Supplier suggesting a direct sale to the customer. The Distributor shall not be entitled to any fee or other remuneration for prospecting a direct sale which the Supplier subsequently carries out, except as otherwise agreed by the Parties in writing before the sale is completed.

[or]

In the case where the Distributor is unwilling or unable to act as buyer and re-seller it may write to the Supplier suggesting a direct sale to the customer. The Distributor shall not be entitled to remuneration for prospecting a direct sale which the Supplier subsequently carries out of..... [*Specify*].

## **5. OBLIGATIONS OF THE DISTRIBUTOR**

- a. The Distributor shall buy and sell the Suppliers Products as specified in this contract, in its own name and for its own account and shall then sell them to third parties domiciling within the Territory in its own name and for its own account. The Distributor shall use its best commercial and business efforts to promote the sales of the Products within the Territory and in its own name and for its own account.
- b. The Distributor shall not actively solicit any sales of the Products outside of the Territory specified in this contract. The Distributor shall restrict his efforts to advertise and solicit sales of the Products to activities executed within the Territory. However, if the Distributor sells Products to third parties residing outside of the Territory; this shall not give rise to any claim for commission payment.
- c. The Distributor shall advertise, promote, distribute and sell the Products in the Territory and to further this employ and train a sales organization adequate to properly (i) solicit the sale of the Products, (ii) respond to inquiries from the Territory concerning the Products, and (iii) efficiently process orders for the Products and visit clients.
- d. The Distributor is authorised to sub-contract transport, logistics and warehousing services to third parties in the context of the performance of its obligations under this contract,

provided that the services provided by such third parties comply with the requirements set out in this contract.

- e. The Distributor [*INSERT - undertakes not to OR is free to*] represent, distribute or sell within the Territory specified in this contract any product which might be in direct competition with the Suppliers Products, at any time after the coming into force of this contract and throughout its duration.
- f. The Distributor [*INSERT is OR is not*] the sole dealer for the Products. The Supplier undertakes [*INSERT not to OR is free*] to appoint other distributors as agents or dealers for the distribution of the Products within the Territory.
- g. The Distributor shall convey any complaints received about defects in the Products to the Supplier.
- h. The Distributor shall keep all stocks of the Products which it holds in appropriate conditions or special conditions if specified in this contract.
- i. The Distributor shall describe itself in all dealings with the Products and in all associated advertising and promotional material as [*INSERT SUPPLIER NAME*] authorized distributor. Marketing and image building costs and policies will be agreed upon between the Parties, paid for in full or/and partly (...%) by the [*INSERT DISTRIBUTOR/SUPPLIER accordingly*]
- j. The Distributor shall keep the Supplier regularly informed about relevant market information concerning the Products in the Territory and shall furnish the Supplier with an annual report [*INSERT on...day/month...of the year*] reflecting planned development of sales and other relevant data as may be requested by the Supplier.
- k. The Distributor shall obtain and maintain all required permits, licenses, and Government authorizations, and shall comply with relevant Product certification or qualification requirements necessary to sell the Products in the specified Territory and with other laws, rules, and regulations of the appropriate governmental authorities applicable to the performance of its obligations under this contract. Costs incurred on Product related requirements/registrations shall be borne by the Supplier.
- l. The Distributor shall abide by recognized industry standards and guidance as to general safety, storage, handling, transportation and sale of the Products in the specified Territory, including without limitation those expressed and developed by the European Association of Chemical Distributors (Fecc).

## 6. OBLIGATIONS OF THE SUPPLIER

The Supplier undertakes:

- a. To supply the contractual Product/s ordered in accordance to the terms of this contract. The Supplier may not reject orders received from the Distributor without giving the reasons for the refusal.
- b. The Supplier undertakes to keep the Distributor competitive especially in terms of quantity and prices.
- c. The Supplier shall reserve the right to alter or discontinue single Products. The Products shall not be changed considerably hereby. However, the Supplier shall render the Distributor at least *[insert]* months advance notice if the Supplier intends to take a Product out of its product portfolio or to alter it.
- d. Where the Supplier replaces or updates any of the Products, or expands its product range with a product falling within the expertise and competence of the Distributor (including, but not limited to varieties of an existing Product), such replacement, updates or new products shall be considered as a Product falling within the scope of this contract and *[INSERT Schedule no]* shall be automatically amended accordingly.
- e. The Supplier will provide the Distributor, free of charge, with all information, documents, samples and advertising material necessary for sales of the contractual Products. The Supplier will pay transport costs and clearance charges of such material. On termination of this contract, the documents, advertising material and samples must be returned by the Distributor to the Supplier. This provision may not affect the intellectual or industrial property rights of the Supplier.
- f. The Supplier undertakes to forward to the Distributor all orders, communications and inquiries he receives directly from the contractual territory *[INSERT this clause only if applicable]*.
- g. The Supplier shall be entitled to grant distribution or sales rights to other representatives or distributors in the Territory and to make direct deliveries to customers in the Territory *[INSERT this clause only if applicable]*.
- h. The Supplier will provide the Distributor with all information reasonably necessary to carry out his obligations as a Distributor.



- i. The Supplier shall organize and provide adequate technical training/technical support of Distributor's staff where deemed necessary and as soon as possible.
- j. The Supplier shall provide general product training sessions from time to time in addition to aforesaid technical training sessions.
- k. The Parties may agree to organize joint visits to Distributor's customers for supplying relevant information related to the Products and/or their use, as well as providing technical service if viable and if so desired by the customer.
- l. The Supplier shall ensure that the Products are manufactured and supplied as per the Product Specifications in this contract, applicable laws and shall continue to meet the Product Specifications during the entire shelf life.
- m. The Supplier shall ensure that the Products comply in form and content with the legal provisions and requirements of the country or countries comprising the Territory expressed in this contract.
- n. The Product shall be delivered to the Distributor in an undamaged condition and shall remain the responsibility of the Supplier until delivery is completed.
- o. The Supplier shall ensure that the Distributor receives all documentation and certificates of conformity or analysis required and that these are as required by the Distributor.
- p. The Supplier shall ensure that the Products specified in this contract are of satisfactory and merchantable quality and are free from defects, liens and encumbrances.

## **7. CONDITIONS PERTAINING TO ORDER, DELIVERY AND ACCEPTANCE**

- a. The Distributor shall purchase the Product/s by written Orders and request a delivery date. An Order shall be binding only when the Supplier accepts it in writing. Acceptance of order/s shall be confirmed in writing within [*INSERT days*] Business Days following receipt of the Order.
- b. Unless agreed otherwise in writing, the delivery conditions of the Products shall take place in accordance with [*INSERT Incoterm and location*].
- c. Either Party may, on promptly informing the other Party in writing, suspend its contractual obligations should they prove objectively impossible or unreasonably

burdensome to perform due to some unforeseeable hindrance beyond its control (e.g. Force Majeure), and shall not thereby incur any liability for default.

- d. Where the Distributor discovers any defects in the Product/s which are apparent on reasonable visual inspection the Distributor shall notify the Supplier in writing within [INSERT days] Business Days of receipt thereof and shall provide reasons for rejection.
- e. The Distributor shall notify the Supplier of any Latent Defect/s in writing within [INSERT days] Business Days following its discovery and shall provide details accordingly.
- f. In the case of rejection of delivery due to defects by the Distributor, the Supplier shall supply, within a maximum of [INSERT days] Business Days from the request by the Distributor or such other period as the Parties may agree, replacement Products (of the same quantity as those rejected by the Distributor) free of charge which are in accordance with the Product Specifications and terms and conditions of this contract. Supplier shall promptly notify the Distributor that it is unable to supply replacement Product, whereupon (without prejudice) the Distributor shall be entitled to obtain from any other supplier such quantity of the Products as the Supplier has been unable to supply, and any additional costs and expenses incurred by the Distributor in relation thereto shall be promptly paid by the Supplier to the Distributor following receipt of reasonable substantiating documentation and within [INSERT days] Business days of receipt of documentation.
- g. The Supplier shall reimburse the Distributor for reasonable costs and expenses incurred as a result of the rejection within [INSERT] Business days and the Distributor shall not be required to pay for any rejected Products.
- h. The Distributor shall suspend orders until the Parties agree that any quality concerns or defects in relation to the Products have been satisfactorily addressed.

## **8. PRICES AND PAYMENT TERMS**

- a. The prices, payment terms and Conditions of Sale in effect at the time of concluding this contract are listed in Schedule [Specify]. If there is any inconsistency between the terms or/and Conditions of Sale and the terms of this contract, the latter shall prevail.
- b. The Parties shall agree to the prices for the next calendar year by the end of each current year. Should the Parties fail to reach such an agreement by that date, each Party shall be entitled to terminate the contract in writing, and by observing a notice period of [Specify]

*no.*] months. Until the Parties reach an agreement or during the time between the termination notice and the actual termination, the prices and terms of the previous calendar year shall continue to apply. All orders received and confirmed by the Supplier prior to the change in prices shall be invoiced at the price in effect before the change.

- c. The Distributor shall not be bound in any way by the prices paid to the Supplier, but said Distributor shall determine at his own risk the prices for the sale of the Products to third parties.

## 9. INTELLECTUAL PROPERTY

- a. [The Supplier shall grant to the Distributor a non-exclusive, irrevocable, royalty free license to use its logo, trademarks and trade names as set out in Schedule [*Specify*] of this contract subject to the restrictions specified below.] [*Use if applicable*]

[*or*]

The Distributor may / may not use the Suppliers' logo, trademarks or other trade names other than to identify and advertise the Products in the course of performing this contract, and only in the exclusive interest of the Supplier. [*Alternative clause – Use if applicable*]

- b. The Distributor shall not permit the trademarks to be used by third parties or register any of the Supplier's patents, trademarks, trade or brand names, registered designs or other intellectual property rights without the prior consent of the Supplier.
- c. The Distributor shall notify the Supplier of any unauthorized use in the Territory of its trademarks. At the request of the Supplier the Distributor shall take part in or give assistance in respect of any legal proceedings and execute any documents and take any action reasonably necessary to protect the trademarks in the Territory. Costs incurred in doing so shall be borne by the Supplier.
- d. On expiry of this contract all licenses referred to in this Clause 9 shall expire and the Distributor agrees to immediately cease use of the Supplier's intellectual property.
- e. The Supplier shall indemnify the Distributor from and against any losses, claims, damages, awards, penalties, legal fees or injuries incurred, which may arise out of or in connection with any third party claim of an alleged infringement of an Intellectual Property Right or any other third party right resulting from the purchase, import, use, storage, transport or resale of the Products by the Distributor in accordance with the terms of this contract.

## 10. CONFIDENTIALITY

- a. Both Parties shall keep confidential the specific terms of this Contract and all non-public information including information relating to the Products and not disclose them to third parties save to such employees or contractors on a need to know for the purposes of performing this contract. The Parties will be liable for any breach by their authorized recipients.
- b. The Parties acknowledge that the terms and conditions of this contract may be disclosed if legally compelled by any relevant authority. The Parties may disclose the terms of this contract to any government authority or to any competent legal authority as long as and to the extent reasonably possible, and each Party consults with the other Party before such announcement on the proposed form, timing, nature and purpose of the announcement.
- c. If so requested by the Disclosing Party, upon termination or expiration of this contract all Confidential Information shall be returned or destroyed, as it may direct.

## 11. ANTI-BRIBERY COMPLIANCE

- a. Both Parties will at all times ensure compliance with applicable anti-bribery legislation [*Specify*], and will where necessary, and at their own expense, provide training and guidance to its own staff to ensure compliance.
- b. Both Parties shall undertake to ensure that its employees (including its subcontractors, agents and other intermediaries) will not, offer, give or agree to give any person whatsoever, or solicit, accept or agree to accept from any person, either directly or indirectly, anything of value in order to obtain, influence, induce or reward any improper advantage.

## 12. FORCE MAJEURE

- a. Neither Party shall be liable for delay or failure to perform any obligations under this contract if the delay or failure is caused by any circumstances beyond its reasonable control, including but not limited to Acts of God, war, civil disorder or industrial disputes. If such delay or failure continues for a period of at least [*Specify period, e.g. 30-90 days*] the Party not subject to the force majeure shall be entitled to terminate this contract by written notice to the other.
- b. The corresponding obligations of the unaffected Party shall be suspended to the same extent as those of the affected Party.

- c. The affected Party shall not be in breach of this contract provided it notifies the unaffected Party in writing as soon as possible setting out the nature and extent of the Force Majeure circumstances and uses all reasonable actions to mitigate or avoid the effect of the Force Majeure.

### **13. LIABILITY**

- a. Either Party shall indemnify, defend and hold harmless the other Party, in full against all claims, liabilities, losses, damages, costs, penalties, legal costs and expenses awarded against or incurred or paid by it as a direct result of:
  - i. A breach of any warranty given by such Party or obligation imposed on such Party under this contract;
  - ii. Any claim that the Products infringe, or their importation, use, supply or resale infringes any Intellectual Property Rights or other third party rights; and
  - iii. Any act or omission or breach of statutory duty of the Supplier or its employees, directors, officers, agents or sub-contractors in manufacturing, supplying, and delivering the Product.
  - iv. A Party will not be held liable for any death, injury or damage solely resulting from the negligent act, misconduct or omission of the other Party.
  - v. The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance covering all matters which are the subject of indemnities under this contract consistent with industry standards and as otherwise provided in this contract. The Supplier shall at the request of the Distributor produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due there under. Upon the Distributor's request, the Supplier shall notify the Distributor in writing of the maximum levels of indemnity insured and shall advise the Distributor of any material changes with respect to the terms and conditions of the insurance policy. During the duration of this contract the Supplier shall not do or omit to do any matter or thing which may prejudice or render voidable such insurance.
  - vi. Neither Party nor its Affiliates shall in any circumstances have any liability of any type for any special, incidental, indirect or consequential damages, including but not limited to loss of profit, loss of opportunity, loss of use, loss of goodwill, loss of anticipated savings or loss of business, arising out of or in connection with this

contract, other than with respect to the Supplier's breach of .....[*Specify obligation*] obligation as set forth in .....[*Specify*] and for claims related to mandatory product liability laws.

#### **14. DURATION AND TERMINATION**

- a. This contract shall enter into force on the Effective Date and shall be in force for a term of [*Specify*] years.

{This contract will be automatically renewed for [*Specify*] years, if not terminated by either Party} [*Use if applicable*].

- b. This contract may be terminated without prejudice to Clause 14.a or any right or remedy either Party may have against the other for breach or non-performance of this contract if any of the following circumstances arise:

i. Either Party commits a serious or grave breach of this contract or persistent breaches of this contract including, but not limited to, non-performance, default or neglect of that Party's duties under this contract and such breach remains unremedied for [*Specify period, e.g. 30 days*] after notice of such breach has been given by the non-defaulting party.

ii. Where the conduct of either Party is likely to have a serious or detrimental effect upon the other Party's business, products and affairs.

iii. If either Party becomes insolvent or unable to deliver or if bankruptcy proceedings have been initiated or if a liquidator has been appointed.

iv. Where either Party commits any acts of dishonesty, fraud or theft.

- c. Such termination will take place with immediate effect on written notice to the other party and without prejudice to any remedy either Party may have against the other for any breach committed prior to the date of such termination or which gave rise to the termination.

- d. Upon such termination the Distributor shall sell and the Supplier shall buy back all the Products falling within the classes set out in Schedule [*Specify*].

- e. Upon termination the Distributor shall have no further rights to use the Supplier's trademarks in any way whatsoever.

- f. If the Supplier partially or completely terminates the contract in the absence of a substantial breach of contract by the Distributor {and in case the contract expires [*use if applicable*]}, the Distributor will be entitled to compensation. The amount of such compensation shall equal [*Specify*] % of the average yearly invoice value between Supplier and Distributor during the period of validity of the contract.
- g. In particular, the Distributor will be entitled to compensation if he has created a clientele and/or a network of sub-distributors, thus leaving the Supplier a large increase in goodwill value from which he will benefit after the contract is terminated [*Use if applicable*].

## 15. JURISDICTION AND DISPUTE RESOLUTION

- a. The Parties hereby acknowledge and declare that this contract is subject to and governed by [*Specify Law*] and the jurisdiction of the [*Specify Country*] courts.
- b. Any dispute arising out of or in connection with this contract shall be settled, if possible by friendly negotiation and in good faith by the Parties. If settlement cannot be reached by negotiation, the dispute shall be finally resolved by [*Specify no. e.g. single*] arbitrator pursuant to the Rules of Conciliation and Arbitration of [*Specify*]. The Place of arbitration will be [*Specify*] and the arbitration proceedings shall be conducted in English [*or Specify language*]. Any arbitration award or decision shall be final and binding on the Parties to this contract.

## 16. MISCELLANEOUS

- a. Any notice given by either of the Parties shall be served on the other Party by personal delivery, pre-paid recorded delivery, first class post, telex or facsimile transmission to the receiving Party's address set out in this contract or such subsequent addresses as may be notified by the Parties to each other.
- b. Each Party will pay the costs and expenses incurred by it in connection with entering into this contract.
- c. At any time during the term of this contract, the Parties may assign any or all of its rights or transfer any or all of its obligations hereunder to any Affiliate.
- d. Entire contract: [*use where applicable*]

- i. It is hereby declared that the foregoing paragraphs, sub paragraphs and clauses of this contract shall be read and construed independently of each other. Should any part of this contract or its paragraphs, sub paragraphs or clauses be found invalid it shall not affect the remaining paragraphs, sub paragraphs and clauses.
- ii. The Schedules to this contract constitute an integral part thereof.
- iii. Failure by either Party to enforce any accrued rights under this contract is not to be taken as or deemed to be a waiver of those rights unless the waiving Party acknowledges the waiver in writing.
- iv. No addition to or modification of any clause in this contract shall be binding on the Parties unless made in writing and signed by the signatories to this contract or their duly authorized representatives.
- v. This contract sets out the entire agreement and understanding of the Parties and is in substitution of any previous written or oral agreement between the Parties.
- vi. Reference to any Statutory Provisions in this contract shall include any Statutory Provisions, which amends or replaces it.

Read, approved and signed in/at

Place/Date

Place/Date

(Supplier)

(Distributor)

(Supplier)

(Distributor)



## Annexes/ Schedules<sup>2</sup>

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### Examples of Annexes/Schedules

- a. Product details and specifications
- b. Territory details
- c. Price List and Payment terms and conditions
- d. Supply terms and conditions
- e. Contract Execution Specifications
- f. Quality specifications and requirements if applicable
- g. Indent business
- h. Implications of REACH on the scope and purpose of the agreement/contract. e.g., it can be provided that:
  - Substances of Very High Concern (SVHC) are explicitly excluded from the contract;
  - The burdensome task of communicating information about the presence of a SVHC (in a concentration above 0.1% w/ or 0.1% according to Member State definitions) is set forth and organized in the contract;
  - The parties can agree in the contract to provide each other with prior notice of reclassification, authorization or restrictions under REACH and make this a reason for amending or terminating the contract;
  - The parties can agree on a specific clause in the contract dealing with a procedure for jointly handling reclassification, authorization or restrictions tasks.
- i. Implications of the Biocidal Products regulation on contractual requirements.
- j. Use by dates/ optimal use by date – There are may be no legal requirement on distributors to include use by dates or optimum use periods on labels. However, if the distributor does so under instruction from the principal then the conditions need to be specified in the contract e.g. what happens with products after the date/period.

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<sup>2</sup> Indicative list only.

# Supplement

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## A. DISTRIBUTION CONTRACT – CHECKLIST<sup>3</sup>

<b>1. Parties</b> <ul style="list-style-type: none"><li>• Who are the parties to this contract?</li><li>• Key contact details &amp; details of legal entities of both parties</li></ul>
<b>2. Description of the product</b> <ul style="list-style-type: none"><li>• E.g. Individual product or product line</li></ul>
<b>3. Type of distribution contract</b> <ul style="list-style-type: none"><li>• Non-exclusive/ exclusive</li></ul>
<b>4. Territorial requirements</b> <ul style="list-style-type: none"><li>• Identify territory</li></ul>
<b>5. Duration</b> <ul style="list-style-type: none"><li>• Specify duration</li><li>• Renewal/Expiry, if applicable</li></ul>
<b>6. Dates</b> <ul style="list-style-type: none"><li>• Contract date</li><li>• Commencement date</li></ul>
<b>Obligations of the Distributor</b>
<b>Obligations of the Supplier</b>
<b>9. Supply of products</b> <ul style="list-style-type: none"><li>• E.g. Manner in which the supply of products to the distributor is</li></ul>

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<sup>3</sup> This is a sample checklist only.

<p>determined</p> <p>Order procedure</p>
<p><b>10. Pricing</b></p> <ul style="list-style-type: none"> <li>• Set out the manner in which pricing is to be determined</li> </ul>
<p><b>11. Costs</b></p> <ul style="list-style-type: none"> <li>• E.g. In relation to storage, sales, warranty etc and who pays?</li> </ul>
<p><b>12. Payment terms and conditions</b></p> <ul style="list-style-type: none"> <li>• Time, currency and method of payment</li> <li>• Payment of any associated taxes</li> </ul>
<p><b>13. Ownership and Risk</b></p> <ul style="list-style-type: none"> <li>• When does title/risk pass to the distributor?</li> </ul>
<p><b>14. Competition/ Competitor's Products</b></p> <ul style="list-style-type: none"> <li>• Can the distributor sell suppliers' competitors' products?</li> </ul>
<p><b>15. New products – first right of refusal (if applicable)</b></p> <ul style="list-style-type: none"> <li>• Gives the distributor first right of refusal to market new products or services of the Supplier in the defined territory and market.</li> </ul>
<p><b>16. Compliance with applicable regulatory regimes</b></p> <ul style="list-style-type: none"> <li>• E.g. Pertaining to import/export, safety, labelling etc.</li> </ul>
<p><b>17. Trademarks and Intellectual Property</b></p> <ul style="list-style-type: none"> <li>• Rights of the distributor to use suppliers' trademarks and other intellectual properties</li> </ul>
<p><b>18. Promotion of the products, e.g.</b></p> <ul style="list-style-type: none"> <li>• Who is responsible for marketing and promotion?</li> </ul>

Will marketing and promotions costs be shared?
<p><b>19. After-sales services if any</b></p> <ul style="list-style-type: none"> <li>• Who is responsible for after sales issues?</li> <li>• Product liability insurance?</li> </ul>
<p><b>20. Sales targets if any</b></p>
<p><b>21. Warranty of the Products</b></p> <ul style="list-style-type: none"> <li>• What obligations does the distributor have?</li> <li>• Product/goods or services warranty</li> </ul>
<p><b>22. Shipping and delivery provisions</b></p> <ul style="list-style-type: none"> <li>• E.g. inspection, possession, title, risk of loss, insurance, change of circumstances.</li> </ul>
<p><b>23. Defective Products</b></p> <ul style="list-style-type: none"> <li>• What happens if the distributor receives defective products?</li> <li>• Recall</li> </ul>
<p><b>24. Termination of the Contract</b></p> <ul style="list-style-type: none"> <li>• Termination triggers e.g. breach of contract.</li> <li>• How can the contract be terminated?</li> <li>• Notice period.</li> </ul>
<p><b>25. Post-termination obligations, e.g.</b></p> <ul style="list-style-type: none"> <li>• Cessation of use of trademarks</li> <li>• Supplier's right or obligation to repurchase inventory</li> <li>• Will the distributor be allowed to sell-off stock and for what period?</li> </ul>

<p><b>26. Indemnity</b></p> <ul style="list-style-type: none"> <li>• What indemnities are to be provided for by the parties? E.g. in case of injury resulting from use of the product.</li> </ul>
<p><b>27. Governing Law / Jurisdiction</b></p> <ul style="list-style-type: none"> <li>• Which country's law prevails in the case of a dispute?</li> <li>• Mediation and arbitration clauses, who pays costs?</li> </ul>
<p><b>28. Confidentiality requirements</b></p> <ul style="list-style-type: none"> <li>• E.g. information pertaining to the product/s</li> </ul>
<p><b>29. Force majeure clause</b></p>
<p><b>SCHEDULE/ ANNEXES<sup>4</sup></b></p>
<p>List and description of products that Distributor will seek sales of.</p>
<p>Specify geographical territory in which Distributor will operate.</p>
<p>Provide details of product trademarks licensed and approved format of use to the Distributor by the Supplier.</p>
<p>Provide list of products that the Supplier will buy back from the Distributor on termination of the contract.</p>
<p>Quality assurance provisions if any.</p>
<p>Etc.</p>

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<sup>4</sup> Indicative only.

## B. LAW APPLICABLE TO DISTRIBUTION AGREEMENTS<sup>5</sup>

COUNTRY	APPLICABLE LAW/LEGISLATION
<b>ARGENTINA</b>	<ul style="list-style-type: none"> <li>No specific framework/provisions.</li> <li>According to the Argentine Civil Code depends on terms and conditions of contracts.</li> </ul>
<b>AUSTRIA</b>	<ul style="list-style-type: none"> <li>No specific provisions.</li> <li>Rules established by Austrian Supreme Court/practical experience/case law.</li> <li>In some case provisions of Austrian Commercial Agents Act (ACAA).</li> </ul>
<b>BELGIUM</b>	<p>Law applicable “Unilateral termination of Exclusive Distributorship Agreements grated for an indefinite duration” (1961) (ACT)</p> <p>More than 50 years of case law</p> <p>ACT is applicable to most Agreements and when not provisions governed by Belgian Contract Law.</p> <p>ACT has 3 conditions to apply – exclusive distributor; in the territory of Belgium and appointed for indefinite period.</p>
<b>BRAZIL</b>	<p>No specific legislation protecting distributors, distribution agreements are governed by the Brazilian Civil Code.</p>
<b>BULGARIA</b>	<p>No specific provisions protecting distributors.</p> <p>Under Bulgarian law, relationship between a distributor and a supplier can be classified either as commercial agency or as a continuous supply agreement depending on the rights and obligations set out.</p> <p>The more independent the distributor the less likely will it qualify as a commercial agent. The commercial agent acts on behalf of the principal while the distributor acts on its own behalf and bears the risk of its own economic activity.</p> <p>Commercial agency regulated by Bulgarian Commercial Act (Art.32-48).</p>
<b>CHINA</b>	

<sup>5</sup> This section includes an overview of the legislation over multiple jurisdictions as of 2014 but **has not been updated** and does not cover all aspects of the law and requirements for these jurisdictions that may apply to your business. While the laws and requirements on this topic continue to evolve and develop, you should consult with your legal counsel to check for completeness of this information, as well as ensure your compliance with all the laws and requirements applicable to your business.

<b>COUNTRY</b>	<b>APPLICABLE LAW/LEGISLATION</b>
	<p>Distribution agreements are covered by Contract Law of the People's Republic of China (PRC).</p> <p>Anti-monopoly Law of the PRC also has relevant provisions (i.e. prohibited behavior)</p> <p>International sales and distribution provisions covered by Foreign Trade Law of the PRC and PRC Regulations for the Control of Foreign Exchange.</p>
<b>CYPRUS</b>	
	<ul style="list-style-type: none"> <li>• No specific provisions protecting distributors.</li> <li>• Cyprus Contract law</li> </ul>
<b>CZECH Rep.</b>	
	<p>No specific provisions.</p> <p>Czech Commercial code applies– does not recognize distribution agreements. Distribution agreements can be considered commercial representation, sales contract or contract having aspects of the two.</p>
<b>DENMARK</b>	
	<ul style="list-style-type: none"> <li>• No specific provisions covering distributors.</li> <li>• General principles of Danish Contract law and Danish Commercial Agents Act apply.</li> </ul>
<b>ESTONIA</b>	
	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• Provisions of the Estonian Law of Obligations Act apply.</li> </ul>
<b>FINLAND</b>	
	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• Applicable law – Finnish Contract law and Sale of Goods legislation.</li> </ul>
<b>FRANCE</b>	
	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• Provisions of the French Commercial Code apply.</li> </ul>
<b>GERMANY</b>	
	<p>No specific statutory provisions.</p> <p>Provisions of the German Commercial Code (HGB) apply. Sections of the HGB implement the Agency Directive but also go beyond the scope of the Agency Directive.</p> <p>General contractual principles and rules developed by the Courts also apply.</p>
<b>GREECE</b>	
	<p>Commercial agency – Presidential Decree 219/1991.</p> <p>Law 3557/2007 – provisions for exclusive distributors.</p> <p>When there is a degree of integration with the supplier commercial organization – commercial agency principles will be applied (according to Greek Case law).</p>

<b>COUNTRY</b>	<b>APPLICABLE LAW/LEGISLATION</b>
<b>HUNGARY</b>	
	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• General provisions of the Hungarian Civil Code.</li> </ul>
<b>INDIA</b>	
	<p>No specific statutory provisions.</p> <p>General Contract Law. At present the Indian Contract Act may be divided into two parts</p> <p>Part 1: deals with the General Principles of Law of Contract;</p> <p>Part 2: deals with Special kinds of Contracts such as (a) Contract of Indemnity and Guarantee (b) Contract of Bailment and Pledge (c) Contract of Agency.</p>
<b>IRELAND</b>	
	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• General principles of Irish Contract Law.</li> </ul>
<b>ITALY</b>	
	<p>No specific provisions.</p> <p>Distribution agreements fall under the general category of ‘sale agreements’.</p> <p>General legislative Provisions applicable - Italian Civil code.</p> <p>Choice of governing law – parties are free to select any law to govern the contract. If silent on governing law the distribution agreement shall be governed by the law of the country where the distributor is based.</p> <p>Based in Italy - Subject to Italian Law - Further, where one party is not Italian it depends on the date of execution of the distribution agreement.</p> <ul style="list-style-type: none"> <li>- Until 17 December 2009 – Rules of 1980 Rome Convention on Contractual Obligations.</li> <li>- After 17 December 2009 – EU Regulation 593/2008 on Contractual obligations.</li> </ul>
<b>LATVIA</b>	
	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• Provisions of Latvian Commercial Law and Civil Law applicable</li> </ul>
<b>LITHUANIA</b>	
	<ul style="list-style-type: none"> <li>• Distribution contracts are covered by section of Civil Code of the Rep. of Lithuania.</li> <li>• For aspects not covered – applicable law - General Rules of Civil law.</li> </ul>
<b>LUXEMBOURG</b>	
	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• General Contracts law applicable.</li> </ul>
<b>MEXICO</b>	



<b>COUNTRY</b>	<b>APPLICABLE LAW/LEGISLATION</b>
	A distribution agreement is a non-regulated agreement under Mexican law, hence the agreement is regulated by the terms and conditions of the agreement.
<b>NETHERLANDS</b>	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• General provisions of Dutch Contract law apply and terms of the agreement.</li> </ul>
<b>NORWAY</b>	<p>No specific provisions. General contractual law.</p> <p>If nature of the distribution agreement is similar to an agency agreement – Agency Act will apply.</p>
<b>POLAND</b>	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• Provisions of the Polish Civil Code apply.</li> </ul>
<b>PORTUGAL</b>	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• General principles of Contract law.</li> <li>• Provisions of the Portuguese Agency Law applicable.</li> </ul>
<b>ROMANIA</b>	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• General Commercial/Contract law and Consumer protection legislation apply.</li> </ul>
<b>RUSSIA</b>	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• Provisions of the Russian Civil code applicable.</li> </ul>
<b>SLOVAKIA</b>	<p>No specific provisions.</p> <p>Law applicable will be chosen by the parties subject to Slovak conflict of law's provisions.</p> <p>Slovak law does not differentiate distribution agreements – thus the agreement is considered a commercial representation, exclusive sales contract or combination of both.</p>
<b>SLOVENIA</b>	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• Provisions of the Slovenian Obligations Code applicable.</li> </ul>
<b>SPAIN</b>	

<b>COUNTRY</b>	<b>APPLICABLE LAW/LEGISLATION</b>
	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• Provisions of Spanish Civil Code and Commercial code apply.</li> </ul>
<b>SWEDEN</b>	
	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• Terms of the agreement and general principles of Swedish contract law apply.</li> </ul>
<b>SWITZERLAND</b>	
	<p>Rules applicable to distribution developed in particular by case law.</p> <p>Statutory provisions for Agency and for ordinary partnership of the Swiss Code of Obligations are applicable (depending on the agreement).</p>
<b>UKRAINE</b>	
	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• Ukrainian Civil Code and Commercial Code (and sale of goods) applicable.</li> </ul>
<b>UNITED KINGDOM</b>	
	<ul style="list-style-type: none"> <li>• No specific provisions.</li> <li>• General aspects of English Contract law and principles from case law.</li> </ul>
<b>UNITED STATES</b>	
	<p>Article 2 of the Uniform Commercial Code governs sale of goods – adopted by all states except Louisiana.</p> <p>Depends on choice of laws of a State.</p> <p>General principles of Contract law and terms of the agreement.</p>

## **C. EU COMPETITION LAW AND DISTRIBUTION CONTRACTS: COMPLIANCE MATTERS**

### **Competition rules applying to undertakings - Treaty on the Functioning of the European Union (TFEU)**

#### **- Core Provisions**

#### **1. Article 101(ex Article 81 Treaty establishing the European Community-TEC)**

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

## **2. Article 102 (ex Article 82 TEC)**

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

## **3. Article 103 (ex Article 83 TEC)**

The appropriate regulations or directives to give effect to the principles set out in Articles 101 and 102 shall be laid down by the Council, on a proposal from the Commission and after consulting the European Parliament.

The regulations or directives referred to in paragraph 1 shall be designed in particular:

- (a) to ensure compliance with the prohibitions laid down in Article 101(1) and in Article 102 by making provision for fines and periodic penalty payments;
- (b) to lay down detailed rules for the application of Article 101(3), taking into account the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other;
- (c) to define, if need be, in the various branches of the economy, the scope of the provisions of Articles 101 and 102;
- (d) to define the respective functions of the Commission and of the Court of Justice of the European Union in applying the provisions laid down in this paragraph;
- (e) to determine the relationship between national laws and the provisions contained in this Section or adopted pursuant to this Article.

## **4. Article 104 (ex Article 84 TEC)**

Until the entry into force of the provisions adopted in pursuance of Article 103, the authorities in Member States shall rule on the admissibility of agreements, decisions and concerted practices and on abuse of a dominant position in the internal market in accordance with the law of their country and with the provisions of Article 101, in particular paragraph 3, and of Article 102.

## 5. Article 105 (ex Article 85 TEC)

1. Without prejudice to Article 104, the Commission shall ensure the application of the principles laid down in Articles 101 and 102. On application by a Member State or on its own initiative, and in cooperation with the competent authorities in the Member States, which shall give it their assistance, the Commission shall investigate cases of suspected infringement of these principles. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.

2. If the infringement is not brought to an end, the Commission shall record such infringement of the principles in a reasoned decision. The Commission may publish its decision and authorise Member States to take the measures, the conditions and details of which it shall determine, needed to remedy the situation.

3. The Commission may adopt regulations relating to the categories of agreement in respect of which the Council has adopted a regulation or a directive pursuant to Article 103(2)(b).

### **Block Exemption Regulations/ Exemptions for vertical supply and distribution agreements<sup>6</sup>**

Whether a vertical agreement actually restricts competition or not will often depend on the market structure. The Commission has adopted Regulation (EU) 2022/720<sup>7</sup>, the **Block Exemption Regulation** (the BER), which provides a safe harbour for most vertical agreements. The BER renders, by block exemption, the prohibition of Article 101(1) TFEU inapplicable to vertical agreements which fulfil certain requirements. The Commission has also published guidelines on vertical restraints.

#### **- Requirements for application of the Block Exemption Regulation**

The first requirement is that the agreement does not contain any of the hardcore restrictions set out in the BER. The second requirement concerns a market share cap of 30 % for both suppliers and buyers. Thirdly, the BER contains conditions relating to three specific restrictions.

#### **■ Hardcore restrictions**

- a. Suppliers are not allowed to fix the (minimum) price at which distributors can resell their products.
- b. Distributors must remain free to decide where and to whom they sell. The BER contains exceptions to this rule, which, for instance, enable companies to operate an exclusive distribution system or a selective distribution system.
- c. Selected distributors, while being prohibited to sell to unauthorised distributors, cannot be restricted in the end-users to whom they may sell. Secondly, t
- d. The appointed distributors must remain free to sell or purchase the contract goods to or from other appointed distributors within the network.
- e. An agreement between a manufacturer of spare parts and a buyer which incorporates these parts into its own products may not prevent or restrict sales by the manufacturer of these spare parts to end users, independent repairers or service providers.

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<sup>6</sup> See, Summaries of EU Legislation, Competition

<sup>7</sup> OJ L 134, 11.5.2022, p. 4–13 - <https://eur-lex.europa.eu/eli/reg/2022/720/oj>

### ■ 30% market share cap

A vertical agreement is covered by this BER if both the supplier and the buyer of the goods or services do not have a market share exceeding 30 %. For the supplier, it is its market share on the relevant supply market, i.e. the market on which it sells the goods or services that is decisive for the application of the block exemption. For the buyer, it is its market share on the relevant purchase market, i.e. the market on which it purchases the goods or services, which is decisive for the application of the BER.

### ■ Excluded restrictions

The BER regulation applies to all vertical restraints other than the abovementioned hardcore restraints. However, it does impose specific conditions on three vertical restraints:

- a. non-compete obligations during the contract;
- b. non-compete obligations after termination of the contract;
- c. the exclusion of specific brands in a selective distribution system.
- d. non-compete obligations imposed on buyers of online intermediation services not to offer, sell or resell goods or services to end users under more favorable conditions via competing online intermediation services.

## Downloadable Compilations of EU antitrust legislation

6. Vol.1. General Rules -  
[http://ec.europa.eu/competition/antitrust/legislation/handbook\\_vol\\_1\\_en.pdf](http://ec.europa.eu/competition/antitrust/legislation/handbook_vol_1_en.pdf)
7. Vol.2 – General Block exemption – Regulations and Guidelines (outdated)  
[http://ec.europa.eu/competition/antitrust/legislation/handbook\\_vol\\_2\\_en.pdf](http://ec.europa.eu/competition/antitrust/legislation/handbook_vol_2_en.pdf)
8. EU Cartel Legislation -  
[http://ec.europa.eu/competition/cartels/legislation/cartel\\_compilation\\_en.pdf](http://ec.europa.eu/competition/cartels/legislation/cartel_compilation_en.pdf)
9. EU Merger control legislation -  
[http://ec.europa.eu/competition/mergers/legislation/merger\\_law\\_2013\\_web.pdf](http://ec.europa.eu/competition/mergers/legislation/merger_law_2013_web.pdf)
10. Vertical Agreements and Guidelines -  
[https://competition-policy.ec.europa.eu/antitrust/legislation/vertical-block-exemptions\\_en](https://competition-policy.ec.europa.eu/antitrust/legislation/vertical-block-exemptions_en)
11. Horizontal Agreements -  
[https://competition-policy.ec.europa.eu/antitrust/legislation/horizontal-block-exemptions\\_en](https://competition-policy.ec.europa.eu/antitrust/legislation/horizontal-block-exemptions_en)
12. Changes to EU Competition Law after the entry into force of the Treaty of Lisbon (1 December 2009) - <http://ec.europa.eu/competition/information/treaty.html>

## Other resources

13. Summaries and checklists: EU Competition Rules applicable to firms -  
[http://europa.eu/legislation\\_summaries/competition/firms/index\\_en.htm](http://europa.eu/legislation_summaries/competition/firms/index_en.htm)

14. DG Competition's Antitrust Manual of Procedures -  
[http://ec.europa.eu/competition/antitrust/antitrust\\_manproc\\_3\\_2012\\_en.pdf](http://ec.europa.eu/competition/antitrust/antitrust_manproc_3_2012_en.pdf)
15. Inspection explanatory note: Describes what happens during an inspection and clarifies the rights and obligations of the company being inspected -  
[http://ec.europa.eu/competition/antitrust/legislation/explanatory\\_note.pdf](http://ec.europa.eu/competition/antitrust/legislation/explanatory_note.pdf)
16. European Commission Antitrust/Cartels - practical Information -  
[http://ec.europa.eu/competition/antitrust/information\\_en.html](http://ec.europa.eu/competition/antitrust/information_en.html)
17. European Commission brochure – Compliance Matters - [http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en\\_GB/-/EUR/ViewPublication-Start?PublicationKey=KD3211985](http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en_GB/-/EUR/ViewPublication-Start?PublicationKey=KD3211985)