

COUNTRY REPORT

Commercial Agency

1. Legal sources.
2. Notion of commercial agent.
 - 2.1 Distinctive criteria with respect to other intermediaries (occasional intermediaries).
 - 2.2 Self-employed agents.
 - 2.3 Authority to conclude contracts on behalf of the principal.
 - 2.4 Agents who also act as resellers.
 - 2.5 Sub-agents.
3. Formalities regarding the contract and its modifications.
 - 3.1 Formalities required by law.
 - 3.2 Contractual requirement of written form for modifications.
 - 3.3 Clauses authorizing unilateral contract modifications.
 - 3.4 Form requirements and applicable law.
 - 3.5 Information about the parties.
4. Agent's obligation not to compete.
 - 4.1 Non competition during the contract.
 - 4.2 Agent engaged for one principal only.
 - 4.3 Post-contractual non-competition obligation.
5. Exclusivity.
 - 5.1 Rights of the agent in the absence of contractual rules.
 - 5.2 What is covered by exclusivity.
 - 5.3 Sole agent/Exclusive agent.
 - 5.4 Contractual limitations to the agent's exclusivity.
6. Sales outside the territory.
7. Acceptance and non-execution of business by the principal.
 - 7.1 Acceptance of orders.
 - 7.2 Non-execution of accepted orders by the principal.
8. Right to commission.
 - 8.1 Amount of commission.
 - 8.2 Business on which commission is due.
 - 8.3 Partial payment by the customer.
 - 8.4 Business concluded or carried out after contract termination.
 - 8.5 Moment when the right to commission arises.
9. Method of calculating commission and payment.

10. Obligations regarding the supply of information to the other party.
11. *Del credere* clause.
12. Principal's trademarks.
13. Term and termination of the contract.
 - 13.1 Contract for a fixed period with automatic renewal.
 - 13.2 Contract for a fixed period (without automatic renewal clause), which continues to be performed after its expiry.
 - 13.3 Termination notice (contract for an indefinite period).
 - 13.4 Form of the notice of termination and effectiveness.
 - 13.5 Earlier termination.
 - 13.6 Unjustified earlier termination.
 - 13.7 Compensation for unjustified earlier termination.
14. Goodwill compensation (indemnity).
15. Limitation of action.
16. Applicable law.
 - 16.1 Legal sources.
 - 16.2 Applicable law in the absence of choice.
 - 16.3 Effectiveness of a choice of law excluding the law of the agent's country.
 - 16.4 Application by the courts of your country of foreign rules having «internationally mandatory» character.
17. Jurisdiction and enforcement of foreign judgments.
 - 17.1 Legal sources.
 - 17.2 Jurisdiction without a choice of jurisdiction clause.
 - 17.3 Effectiveness of a jurisdiction clause in favour of foreign courts.
 - 17.4 Recognition - enforcement.
18. Arbitration.
 - 18.1 Legal sources.
 - 18.2 Arbitrability.
 - 18.3 Arbitration clauses.
 - 18.4 Recognition of foreign awards.

List of clauses that might not be fully effective or that should be deleted or modified

Clause	Model	Advice
		The clause is contrary to It should be replaced by the clause indicated in §
		The clause is not fully effective, because ...

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via Alfieri 19, 10121 Torino (Italy)
www.idiproject.com