

NEGOTIATING AGREEMENTS FOR DISTRIBUTION WITHIN DEPARTMENT STORES

RINASCENTE

Concession Contracts:
the department store's perspective



Scope of the contract

Drafting an agreement for the consulting, commercial development and resale concession of products of different Operators at the Company's department stores

Legal framework

- Our legal system allows the creation of new contractual positions that are recognised by the law, provided that they are aimed at securing interest that is worth safeguarding (art. 1322, paragraph 2 of the Italian Civil Code)
- The concession agreement is not a “typical” contract within the meaning of a certain contract provided for by the law

Atypical contract

- Case law tries to standardise as far as possible the contracts, often assimilating them to categories that have features in common.
- Reference is made to the so-called
 - “atypical contracts” and
 - “mixed atypical contracts”
- This is the case of our “Consulting, commercial development and resale concession” agreement which derives from the Anglo-Saxon model known as “Concession”.

Typical contractual models

- Contract for services (tender contract for work and services pursuant to art. 1655 of the Italian Civil Code)
- Consignment or Sale or return contract (art. 1556 of the Italian Civil Code)
- Free Loan (art. 1803 of the Italian Civil Code)

Operator's perspective

It is the Operator's interest to:

- rely on the experience, skills and know-how of the Company;
- take advantage from the use of the Company's brand;
- exploit the Company's image and reputation and its accredited distribution model;
- exploit the spaces and the Company's commercial license.

Company's main services

Services provided by the Company

- Use of commercial spaces
- Commercial and distribution know-how
- Assistance with layout concept and development
- Assistance with the development of an adequate marketing policy and product promotion
- Collaborating with staff recruitment and induction process
- Inserting products in the integrated system of the Store
- Exploiting the license and administrative authorisations
- Use of the brand

Accessory services

Accessory services provided by the Company:

- Extension of the insurance coverage of the building
- Telephone/fax/internet connection
- Power supply
- General use of heating and air-conditioning system
- Use of shared services
- Use of general guard service
- Use of cleaning services
- Use of maintenance and repair services

Activity carried out by the Operator

- Presenting a project and developing the Unit in compliance with:
 - Labour and safety regulations
 - Legal rules governing commercial activities
 - Instructions issued by the Company
- Allocating suitable staff to manage the Unit and perform sale, promotional and customer service activities

Staff at the Unit

- The Operator undertakes to:
 - **Hire staff** through regular contracts allowed by currently applicable legal regulations;
 - Promptly fulfil all remuneration, **social contribution** and pension obligations;
 - Ensure the full application of and compliance with the regulations on **safety** in the workplace;
 - Comply and ensure compliance with the Company's **Code of Ethics**;
 - Organise its own staff so as to ensure their **constant presence** at the Unit;
 - Adopt the necessary measures in the event of injurious behaviour by its own staff.

Relationships with the Company

- The Operator's staff is and remains within the competence and **RESPONSIBILITY OF THE OPERATOR**;
- **NO CONSTRAINT** will be set between the staff of the Operator and that of the Company and no hierarchical, disciplinary, coordination and control power can be exercised;
- Under **NO** circumstances and for no reason will the Company be entitled to ask the Operator's staff to provide **SERVICES** at the Store for purposes **OTHER THAN THE PROMOTION AND SALE OF THE OPERATOR'S OWN PRODUCTS**;
- The Company will recognise the Operator the right to grant its staff the **SERVICES AND BENEFITS** enjoyed by the Company's staff.

Service and accessory fees

- **Percentage of net turnover** achieved
- **Transfer of the ownership** of products
- **Billing and Payment**
- **Accessory fees**

Concession vs other contracts

- **Own buy**
- **Consignment**
- **Shop in Shop** (“lease of going concern” or “assignment of retail division”) (*affido in gestione di reparto*).

Strengths and Weaknesses

- For the Operator:
 - Exploiting commercial space in a prestigious location
 - Benefit of being included in a luxury commercial context
 - Use of its own layout and sales management
 - Control on products' distribution (stock, etc.)
 - Dedicated and trained staff
- For the Company:
 - Presence of prestigious brands at the stores
 - Financial advantages of sales
 - No risk of unsold stock

Strengths and Weaknesses

- For the Operator:
 - Expensive initial investment
 - Possibility of being moved within the store
 - Flexible duration and termination
 - Challenging outcome goals
 - High competition
- For the Company:
 - Economic conditions not always profitable
 - Less flexibility in space management
 - Very limited control on the operator's staff
 - Possible risk of litigation in the event of withdrawal

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The Danish framework



Danish Commercial Rent (the «Act»)

- Is the Act which states **mandatory rules** with regard to lease of separate physical unit and it is applicable for letting of premises surrounded by walls;
- Case law confirms that contracting parties can validly waive rights and obligations under the Act in case the premises are surrounded by **up to two walls** (corner shop);
- The tenant/concessionaire can insist on the Act's mandatory rules being applicable, despite having agreed otherwise, in case the premises are surrounded by **three or four walls**.

- By negotiating a concession it is possible to agree on a **fixed term lease**. However, the enforceability of a fixed term lease also depends on the applicability of the Act.
- If the Act applies it is general rule that the lessor cannot terminate a lease agreement, except than in certain cases
 - The lessor wishes to use the premises itself
 - Demolition or conversion of the property
 - Failure to comply with house rules
 - General strong reasons
- **If the Act does not apply termination clauses are valid**

Not applicability of the Act to Concession contracts

In order not to apply the Act, **the main services have to prevail** to the simple usage of the premises.

- The main services are e.g.:
 - Marketing activity
 - Shopping bags
 - Training for the staff
 - Responsibility towards customers
 - Turnover of the concessionaires directed to the Company
 - Payment of a concessionaire may be done at another concessionaire cash desk
 - Cash registers supplied by the Company
 - Customers Service desk common for all concessionaire
 - Voucher issued by the Company can be used in all the store

The Danish rent law, as well as commercial lease law, require specialist knowledge and practical experience when advisory services are provided to clients.



International Distribution Institute

THANK YOU

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