



International Distribution Institute

Strategies for terminating distributorship agreements without losing control over the sales network

Maged Ackad

ACKAD LAW OFFICE

IDI country expert for Egypt

An overview regarding three type of agreements concluded in Egypt

Concession

Prestigious Cars

Distribution

Mobiles & Tablets

Franchise

Mobile & Data Network Provider

The three suppliers are multinational companies



TWO STRATEGIES

During the
Contract

After the
Contract

DURING CONTRACT OBLIGATIONS

Non-Exclusivity

The Distributor undertakes not register himself in any official registry or with any official agency and/or authority and/or institution, which may, in any way whatsoever, limit and/or restrict the Company from appointing any other Distributor for the Products in the Territory. The company, reserves the right to sell Products in the Territory by direct sale to Dealers and Retail Customers.

Sales and marketing reports

The Distributor shall provide the Company with sales reports by the first day of each calendar month, as well as marketing reports on a periodic basis containing such information about actual and potential End Users, the market for Products, and ...

End User records

The Distributor shall promptly report to the Company all known or suspected Product defects or safety problems and maintain and periodically provide to the Company an accurate and complete list of End Users by name and address, ... The obligation to maintain and make such information available to the Company shall survive expiry or termination of this Agreement.

Defective product replacement

To request defective product's replacement, the Distributor must submit the following information: 1. Dealer Name, 2. End User Name, 3. End User Phone Number and address, ...



Ownership and use of Marks

The Distributor agrees that ownership and all right, title and interest in and to the Marks are and shall remain vested solely in the Company. The Distributor may use the Marks to the extent and only to such extent necessary to perform the Distributor's duties hereunder. The Distributor shall not use, directly or indirectly, in whole or in part, the Marks in connection with any product other than the Products. The Distributor will be required to indicate explicitly the Company's ownership of the Marks.

Retail Customers data

The Distributor will maintain for a period of not less than XXX years from the date of each sale of a Product, and shall produce to the Company, the names of the Retail Customers to whom the Product was sold, the delivery address and the date of sale within XX months of the date of sale to the Retail Customer. Distributor acknowledges that Customers data is of core and considerable value for the Company and acknowledges that in the event where it uses or disposes of such customers data in manner that is not stated under this Agreement or in an abusive or negligent manner or otherwise makes available such data to any third party in any mean or manner, Distributor declares that this would cause irreparable material and moral harm, losses and damages to the Company ...

Audit and control measures

The Company, shall have the right to audit the Distributor's books, records, stocks, invoices, management accounts ... to verify compliance with any of the provisions of this Agreement. The Company, shall further have the right to enter the Importer's premises, within normal business hours, to audit the Importer's facilities, Products, plant, equipment, tools, stock and all records and accounts relating to the Distributor or its Dealers.

END CONTRACT OBLIGATIONS

Other than the classic post contractual non competition obligation, accepted under Egyptian law as long as it is limited in time, scope or territory, the three agreements contained other mechanisms that lead to the neutralization of the ex distributor and his replacement, hence permitting to the Supplier to take over the control of sales.

Appointment of new distributors

During the last six months of the Term, or following its termination the Company shall be entitled to appoint one or more new distributors of Products for the Territory and to accept orders from and deliver Products to any such new distributors.

Neutralization of the previous distributor

In the event of expiry or termination of this Agreement for any reason, the Distributor shall immediately cease to sell, promote, market or advertise the Products or to make use of the Marks. Any right to use the Marks pursuant to this Agreement shall terminate immediately. The Distributor shall, within XX days send to the Company (or otherwise dispose of in accordance with the instructions of the Company) any sample, demonstration or loaned Products, components of Products, and all promotion or sales material relating to Products.

Acquisition of distributor's real estate

The distributor shall negotiate in good faith with the Company or its nominee towards possible acquisition of any real estate or facility of the Distributor used for the purposes of this Agreement.