

True” and “untrue” agents in the new Guidelines

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Introduction

Evaluation method

*“The Agent undertakes a **del credere obligation** according to the terms and conditions hereunder:*

- 1. With respect to business transmitted by the Agent, the latter undertakes in case of non-payment by the customer to pay to the Principal 15% of the sums not recovered*
- 2. The del credere obligation does not cover the expenses incurred by the Principal for recovering his credits.*
- 3. The del credere undertaking shall apply to: any business transmitted by the agent where the customer has not paid when due*
- 4. The Agent shall be entitled to an extra commission of ___ % on all business on which he has granted del credere.*
- 5. No del credere is due if the loss is due to reasons for which the Principal is clearly responsible.”*

A true agent cannot bear any significant market-specific costs/investments

- *(Obligation to promote sales). «The Agent agrees to use his best efforts to promote the sale of the Products within the whole Territory in accordance with the Principal's indications and shall protect the Principal's interests with the diligence of a responsible businessman. In particular, the Agent agrees to visit regularly, according to their importance, the actual or potential customers throughout the whole Territory and to establish and maintain an adequate organisation.»*
- *(Sales organisation). “The Agent shall provide and maintain an adequate organisation to promote sales and, where appropriate, after-sale service, with all necessary means and personnel, in order to ensure the fulfilment of his obligations throughout the Territory under this contract.”*
- *(Fairs or exhibitions). «The Agent shall take part, at his own expense, in the most important fairs and exhibitions in the Territory. The Principal reserves however the option to participate directly to any fair or exhibition in the Territory: in such case the Principal will bear the respective expenses.»*
- *(Show-room). «The agent agrees to maintain at his expense a show-room for the presentation of the contractual products»*

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- **(Advertising).** *«The Agent shall be responsible for all advertising necessary to adequately promote the Products within the Territory. He agrees to regularly advertise and market the Products and to promote the Principal's name and trademarks in the Territory.»*
- **(Cost of Advertising).** *«The costs of all advertising and sale promotion activities shall, unless otherwise agreed, be borne by the Agent. The Principal shall however reimburse, within three months following the end of each calendar year, a sum calculated according to Annex B. The above sum shall be invoiced to the Principal by the Agent together with suitable documentation supporting the expenses incurred.»*
- **(Expenses covered by commission).** *“The Agent shall bear all expenses incurred in promoting the sales (such as telephone, telex, office, travel expenses) as well as any other expense made within the context of this contract. Such expenses shall be deemed to be entirely covered by the commission provided for in article 12.”*

Dual role agents

- *(Agent acting as buyer-reseller). «The parties may agree, when appropriate, that the Agent will buy a certain amount of Products from the Principal for resale, in his own name, in the Territory. Unless otherwise agreed in writing, the Agent is not entitled to commission on such sales. It is expressly agreed that such activity as buyer-reseller, to the extent it remains of an accessory character, does not modify the legal status of the Agent, as a self-employed commercial intermediary. Moreover, this accessory activity shall not be considered when calculating the goodwill indemnity according to Article 21 of this Contract.»*



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Impact on the agent's protection under national agency law