

CHECKLIST FOR INTERNATIONAL DISTRIBUTION AGREEMENT

- Legal identity of the parties (due diligence)
- Appointment of distributor: exclusive or non-exclusive
- Territory: define geographical area precisely
- Products or services: identify specifically
- Improvements/additions to products or services
- Term of agreement (renewal option)
- Confidentiality
- Non-compete (during/after – limited time period)
- Relationship between parties: independent contractor
- Distributor's obligations: advertising, minimum purchases, sales increases, orders, service to customers, inventory, office maintenance, attend product training, permits and licenses, compliance with local laws and regulations, insurance, access to premises, accounting and reports, other
- Supplier's obligations: product literature, advertising, free training seminars, sample products, sales leads in territory, sales support, quality controls, returned defective products, visits to distributor's offices, other
- Purchase price (discounts)
- Method of payment and currency
- Shipping and delivery: Incoterms® 2010 (inspection, title, risk of loss, insurance, variants)
- Product warranty (full/limited) and disclaimers
- Other terms and conditions of sale
- Competing products: permitted or prohibited
- Limited license: trademarks and copyrights (other intellectual property)

- Force majeure (allocate risk for an extraordinary circumstance beyond the control of the parties, such as a war, strike, riot, crime, or "act of God")
- Compliance: export controls, import regulations, Foreign Corrupt Practices Act (FCPA), other
- Limitation of liability: what to include, be specific
- Indemnification: be clear as to intent and scope
- Early termination: for cause/with notice
- Effect of termination
- Choice of law: select the law that will govern disputes
- Dispute resolution: mediation, arbitration, court
- General provisions: severability, entire agreement, modification and waivers, non-assignment, other

Each agreement must be custom tailored – no one-size-fits-all

Watch out for mandatory laws of foreign country

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Disclaimer: For the drafting of international distribution agreements you should seek competent advice from a licensed attorney who has experience in such matters. This Checklist does not constitute legal advice and it does not take into account the specific circumstances of your situation.

About the Export Legal Assistance Network (ELAN): With a presence in 70 U.S. cities and with the participation of more than 250 attorneys, the Export Legal Assistance Network (ELAN) program is a nationwide group of attorneys in private law firms that volunteer to provide an initial legal consultation free of charge to companies just beginning to export. Under ELAN, knowledgeable lawyers help new export companies learn the legal aspects of international trade, issues relating to export licensing, tariffs, protection of intellectual property rights and much more. For additional information, visit www.exportlegal.org.