

DISTRIBUTION AGREEMENTS CHECKLIST

1. Clearly identify the products being dealt with.
2. Type of distribution right to be granted, that is, exclusive or non-exclusive, with or without the right to appoint sub-distributors.
3. Limitations upon the rights granted:
 - (a) territorial restriction;
 - (b) field of use restriction, e.g. mariner management versus other potential uses;
 - (c) owners rights to sell in the territory/appoint others;
 - (d) treatment of multinational customers (i.e. if the customer they want to license to operates in countries outside the territories granted to them, then can they sell to the customer for those extra countries? If not who can? Same applies for sales to multinationals by other licensees where the multinational also has presence in their territory).
4. Order/Payment/Delivery method for products:
 - (a) are we giving them a right to burn our CD's and sell? If so how do we manage this? track sales etc?
 - (b) when is payment made? Who is it made to? If to us, how do we pay them? If to them, when do we get paid?
 - (c) how will they order keys? Suggest that we control so we know what actual sales are made.
5. Minimum Performance Criteria:
 - (a) Will this be for the territory generally, or per country in the territory?
 - (b) Consequences if not met – non-exclusive or terminate or reduce territory etc.
6. Other Fees:

What support will have to be paid for by the Distributor etc.
7. Technical assistance to be given to the Distributor:

- (a) start-up help;
 - (b) technical assistance on specific problems;
 - (c) what other support?
8. Intellectual Property:
- (a) warranties and indemnities;
 - (b) agreement not to contest;
 - (c) grant back to the Owner any rights that the Distributor has in any modifications;
 - (d) agreement to sell under Owner's trade mark.
9. Reporting obligations:
- (a) length of reporting period, quarterly or annually;
 - (b) keeping of records and right to inspect the same.
10. Other obligations of Distributor:
- (a) actively promote and market products;
 - (b) must obtain approval of Owner for sales and promotional materials;
 - (c) maintenance of adequate and competent sales staff.
11. Term of distribution agreement:
- (a) fixed term or ongoing until notice or termination?
 - (b) if fixed will there be a right of renewal?
12. Litigation provisions:
- (a) what liability is Owner to have for product failure? Will it give Distributor an indemnity in relation to this?
 - (b) what liability is Distributor to have for product failure? What liability is Distributor to have for over promoting/over selling the ability of the product or Owner's services. Will Distributor give an indemnity in relation to this?
13. Termination provisions:
- (a) right of termination by a party on default of the other party;
 - (b) right of Owner to terminate if minimum performance requirements are not met;
 - (c) right of either party to terminate upon the insolvency of the other party.

14. Confidentiality obligations should be defined with respect in any technical information exchanged under the agreement.
15. Rights upon termination:
 - (a) what should continue, what should end?
 - (b) confidentiality obligation with respect to technical information to survive such termination;
 - (c) pass back by Distributor of sales records, contact lists and promotional materials.
16. Assignment rights of both parties to successors in business or to affiliates should be defined.