

## **INTERNATIONAL AGENCY CONTRACT TEMPLATES: KEY TERMS**

Before entering into an agreement with a commercial agent overseas, export companies need to have a model of International Commercial Agency Contract that regulates the relationship between the exporter (the "principal" in the contract) and the agent. When drafting and negotiating this type of contract template, companies must take into account the following:

### **SPECIFY THE TERRITORY**

Before specifying the territory covered by the agreement, find out what is the custom in the area. China, for example, is a vast country and one agent is unlikely to have the capacity to cover more than a part of the country. Your prospective agent will want as big a territory as possible and he might even want to cover neighbouring countries e.g. an agent in Dubai might suggest he represents you in all the GCC states. Resist this even if he has the ability, start with a limited area and see how it develops. It is much easier to enlarge than reduce the territory. And always be specific - don't, for example, refer to Europe or the Middle East or South East Asia but instead specify which countries are covered.

### **SPECIFY THE PRODUCTS**

There is no need to include all your products, especially if you have a diverse range: as with territory, start with a manageable list and you can always expand it. Or you might want other agents for some products. Make it clear in the agreement and ideally list the products in a schedule.

### **EXCLUSIVE OR NON-EXCLUSIVE?**

State which applies. Whether or not the agreement is exclusive in the territory, remember to deal with sales to other territories: what are the agent's right to commission if he finds a buyer for another territory or a buyer in his territory who wants to have the goods delivered somewhere else? And if you want to make direct sales to certain existing customers that you already have in the territory where the agent will get no commission or a reduced amount, spell this out. You might in these circumstances refer to him as your sole agent rather than exclusive agent, making it clear that he only receives commission on the sales that he makes, whereas an exclusive agent may claim commission even if he is not involved in making the sale.

### **DURATION**

What is the initial term of the agreement? If you have not already had a trial period, make it long enough to give the agent time to get established and into the market with your products, but no longer. Include a provision that allows the agreement to be rolled over for another period - e.g. 2 years initially and then from year to year until terminated.

## COMMISSION AND PAYMENT

In your agreement, set out:

- the commission payable, which may be on a sliding scale depending on sales volume
- when will it be payable: monthly, quarterly etc.
- calculation of commission should take account of any deductions, e.g. VAT, shipping costs etc., as well as any non-payment by customers or refunds that have to be made. Occasionally certain customers may not qualify the agent for commission or result in a lower rate e.g. your existing customers in the territory or customers based outside the territory, or else a different rate may apply there.

## SALES TARGETS

It is useful to specify these in the agreement – so that you can monitor performance. You need to agree the initial targets with the agent – and allow in the agreement for new or adjusted targets to be set in future years. Another reason for having targets is that this can be useful following termination to challenge an excessive claim for compensation if you can show the agent under-performed.

## GENERAL OBLIGATIONS OF AGENT

In addition to promoting sales, you may want to include such things as:

- Regular reporting
- Training of staff
- Maintaining adequate spares
- Insurance

And perhaps arranging transport and hotel accommodation for you and your staff when visiting the territory.

## GENERAL OBLIGATIONS OF PRINCIPAL

Apart from paying the agent, you may want to spell out some of the activities you will perform such as:

- providing advertising material
- training for the agent's staff
- keeping the agent up-to-date on prices and products.

## INTELLECTUAL PROPERTY

It is sensible to have a clause that makes it clear that you own the intellectual property in your products and that the agent has only limited rights for the duration of the agreement

and is prohibited from doing anything to infringe your intellectual property rights. The clause may also require him to alert and assist you if any counterfeit products appear in the territory.

## TERMINATION

Although in some countries termination might not be as easy in practice as the contract terms may suggest, you should always include a provision that at the very least allows you to terminate the agency if the agent:

- Becomes insolvent.
- Commits a serious breach of the agreement.
- Consistently fails to meet sales targets.

Sometimes a change of ownership of the agency might justify termination. And the agent should have a right to terminate if you fail to pay commission.

Compensation may be payable on termination – in some countries even if the agent has performed badly – so be careful not to exercise your rights under such a clause until you have assessed the likely implications – and taken legal advice.

## COMPETITION

You may want a provision that prevents him from acting as agent for a competitor both during the life of the agreement and at least for a time, maybe 6 or 12 months after it finishes.

## LANGUAGE

When the two parties do not share the same language, which is very common in international trade, it is advisable to use a commercial agency contract in two languages, English-Spanish, English-French, English-German. This fact is even more relevant when hiring an agent in countries like China or Russia. In Globalnegotiator website you can find [Models of Commercial Agency Contracts in 8 languages](#).

## DISPUTE RESOLUTION AND GOVERNING LAW

In an ideal world you may think the agreement should be governed by the law of your country and disputes resolved in its courts. But this may not be possible or advisable. Firstly, in a country which requires agency agreements to be registered with a government department, it is sometimes mandatory that the agreement is governed by the law of that country. Secondly, if the agent has no assets in your country there may be little point in suing him there as you would have to get the judgment enforced in his own country – and that is likely to necessitate bringing the proceedings all over again.

A useful compromise, especially if local law has to apply, is to have an arbitration clause with arbitration in a neutral country such as Switzerland. If the country where the agent is based and the country where the arbitration takes place are both signatories to an international treaty – the New York Convention – then the arbitrators’ award should be enforceable in both your country and the agent’s country.

Alternatively you might agree to a compromise where the law of your country applies to the agreement but disputes are resolved in the agent’s country by arbitration. In China, for example, there is an international arbitration centre, CIETAC, that could be used and whose arbitrators are from around the world.

## CONCLUSION

When hiring a commercial agent in foreign markets be sure to spell out all the key terms and requirements in your agreement – territory, products, commission, initial period, targets, termination rights, etc. Don’t omit any important matters in the hope they will sort themselves out later. In [Globalnegotiator website](http://Globalnegotiator.com) you can find models of international commercial agency contracts in several languages and also adapted to legal practices in some of the main countries.

| AGENCY CONTRACTS IN 5 LANGUAGES   | AGENCY CONTRACTS FOR 5 COUNTRIES  |
|---|---|
| <a href="#">International Commercial Agency Contract</a><br><a href="#">Contrato de Agencia Comercial Internacional</a><br><a href="#">Contrat d’Agent Commercial International</a><br><a href="#">Internationaler Handelsvertretervertrag</a><br><a href="#">Contratto di Agenzia Commerciale Internazionale</a> | <a href="#">Agency Contract for China</a><br><a href="#">Agency Contract for India</a><br><a href="#">Agency Contract for Russia</a><br><a href="#">Agency Contract for Brazil</a><br><a href="#">Agency Contract for USA</a> |

# INTERNATIONAL CONTRACTS TEMPLATES



## INTERNATIONAL CONTRACTS IN ENGLISH

- International Sale Contract
- International Distribution Contract
- International Commercial Agency Contract
- International Sales Representative Agreement
- Intermediary Contract for Trade Operations
- International Joint Venture Contract
- International Strategic Alliance Agreement
- International Franchise Contract
- International Services Contract
- International Consulting Contract
- International Technology Transfer Agreement
- International Trademark License Agreement
- International Supply Contract
- International Manufacturing Contract
- International Buying Agent Contract
- Logistics Services Contract
- Export Contract
- Confidentiality Agreement
- Expatriate Contract of Employment
- Memorandum Understanding International distribution
- Memorandum of Understanding for Joint Venture
- **Pack 10 Contracts in English**
- **Pack All Contracts in English**



## INTERNATIONAL CONTRACTS IN SPANISH

- Contrato de Compraventa Internacional
- Contrato de Distribución Internacional
- Contrato de Agencia Comercial Internacional
- Contrato de Representación Comercial Internacional
- Contrato de Intermediación Comercial Internacional
- Contrato de Joint Venture Internacional
- Contrato de Alianza Estratégica Internacional
- Contrato de Franquicia Internacional
- Contrato Internacional de Servicios
- Contrato Internacional de Consultoría
- Contrato Internacional de Transferencia de Tecnología
- Contrato Internacional de Licencia de Marca
- Contrato Internacional de Suministro
- Contrato Internacional de Fabricación
- Contrato de Agente de Compras Internacional
- Contrato de Servicios Logísticos
- Contrato de Exportación
- Contrato de Confidencialidad
- Contrato de Trabajo para Expatriado
- Memorándum Entendimiento Distribución Internacional
- Memorándum de Entendimiento para Joint Venture
- **Pack 10 Contratos en Español**
- **Pack Todos los Contratos en Español**



## INTERNATIONAL CONTRACTS IN FRENCH

- Contrat de Vente Internationale
- Contrat de Distribution Internationale
- Contrat d'Agent Commercial International
- Contrat de Représentation Commerciale Internationale
- Contrat de Joint Venture Internationale
- Contrat de Franchise Internationale
- Contrat International de Services
- Contrat International d'Approvisionnement
- Contrat International de Fabrication
- Contrat de Confidentialité
- Protocole d'Accord pour Distribution Internationale
- Protocole d'Accord pour Joint Venture Internationale
- **Pack Tous les Contrats en Français**



## INTERNATIONAL CONTRACTS IN GERMAN

- Internationaler Kaufvertrag
- Internationaler Vertriebsvertrag
- Internationaler Handelsvertretervertrag
- Internationaler Vertretungsvertrag
- Internationaler Joint Venture Vertrag
- Internationaler Franchisevertrag
- Internationaler Dienstleistungsvertrag
- Internationaler Liefervertrag
- Internationaler Herstellungsvertrag
- Geheimhaltungsvereinbarung
- Absichserklärung Internationalen Vertriebsvertrag
- Absichserklärung Joint Venture
- **Pack Alle Verträge in Deutscher**

