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## SIGNIFICANCE OF SIGNING CUSTOMISED AGREEMENT WITH DISTRIBUTORS

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In the present times, where markets are widespread, it is convenient and sensible on the part of Manufacturers/Brand Owners to have a well dispersed chain of Distributors to make the goods available across cities and states. Distributors play an important role not just in Brand Development but also the overall success of a business as a Distributor is the face of the Company and is a link between Manufacturers/Brand Owners and consumer of goods. We can say that the success of a business is somehow directly related to its growing chain of Distributors.

Clarity, transparency and certainty are key ingredients for a healthy and prolonged relationship. Oral promises and assurances can neither be relied upon nor sufficient to establish the terms of any business/commercial relationship. So, in order to avoid any dispute which could arise in future due to confusion and/or lack of understanding, it is necessary for Manufacturers/Brand Owners and Distributors to sign a comprehensive Agreement which would regulate the business/commercial relationship.

We all know that it takes years to build Brand Value and Goodwill and an instance to lose it. So we should be very cautious while entering into any business/commercial relationship and sharing the intellectual property, business know-how and other important proprietary and confidential information of our business with the Distributor.

Distributor Agreement must contain the following clauses which are crucial and a cause of concern for any Business:

### **1. Nature of Relationship**

Distributors are often independent entities which are associated with the Company on commission or profit sharing bases. So in order to avoid any vicarious liability, the Agreement must specify that the Distributor is not an agent, partner or employee of the Company.

## **2. Payment**

Since the Manufacturer/Brand Owner and Distributor have come together for the commercial purposes, this clause must clearly set out the payment terms agreed between the parties. However, in case of non-abidance of such terms, the Agreement must clearly mention the consequences in the form of interest, damages, compensation, termination, etc.

## **3. Intellectual Property such as Trade Mark, Copyright, Trade Secret**

The nature of relationship between the Manufacturers/Brand Owners and Distributor is such that the Manufacturers/Brand Owners have to allow the Distributors to use intellectual property of the company including Trade Marks, Service Marks, Copyrights, Proprietary Design, Business Know-How, etc. Since the Distributors by virtue of their relationship with the Manufacturers/Brand Owners have access to confidential information, the Agreement must provide for the limited use of such confidential information and strict liability for misuse of such information and intellectual property.

## **4. Assigned Territory**

The rights granted to a Distributor for selling the goods must be restricted to a particular area/region because a single distributor cannot effectively generate sales in a considerably larger area/region. The other reason for restricting the area/region of a Distributor is to avoid any disputes between the Distributors selling in common area/region.

## **5. Exclusivity/Non-Exclusivity**

The Agreement must clearly specify whether the Distributorship rights granted are exclusive i.e. only one Distributor of Manufacturer/Brand Owner or non-exclusively i.e. multiple Distributors. In case of exclusive distributor, the Manufacturers/Brand Owners can take minimum sales guarantee from the Distributor.

## **6. Post Termination Restrictions**

Since a Distributor is in possession of confidential information of a company, the chances of misusing such information is more when the Agreement is terminated or the Agreement has expired. Therefore the Agreement must provide for the penalty, liquidated damages, compensation, etc. in case such information is misused after the expiry or termination of the Agreement.

## **7. Misleading Advertisement**

As the Distributor is the face of the Company and is using the intellectual property of the Company for selling the goods of the Company, the Agreement must provide for the strict action such as termination, damages, etc. in case any Distributor spreads wrong and misleading information about the Company.

## **8. Dispute Resolution**

This clause guides the parties in case of any dispute and the parties can agree upon referring any dispute to arbitrator or they can directly move the court.

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