

AGRIBUSINESS SERIES

Export Handbooks

INTERNATIONAL
TRADE CONTRACTS
A PRACTICAL GUIDE
FOR EXPORTERS



Inter-American Program for the Promotion
of Trade, Agribusiness and Food Safety

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Agribusiness and Food Safety

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The Inter-American Institute for Cooperation on Agriculture (IICA), through its Agribusiness Competitiveness Directorate, seeks to assist countries in identifying and taking advantage of opportunities offered by the market, and to support public and private institutions in promoting the competitive development of agribusiness.

In January 2004, IICA launched the *Inter-American Program for the Promotion of Trade, Agribusiness and Food Safety*, headquartered in Miami, Florida, USA. This initiative emerged with the mandate to provide increased technical cooperation in order to strengthen the entrepreneurial capacity of small and medium-sized agribusinesses in IICA's member countries, enable them to take advantage of trade opportunities and provide information to facilitate decision-making processes in business.

The activities carried out to date by the Program have helped to identify a set of specific needs common to small and medium-sized agribusinesses in the Americas. These needs have been classified as “priority issues” and are analyzed in the IICA publications entitled *Agribusiness Series*, specifically with the aim of contributing to strengthen the competitiveness of the hemisphere's small and medium-sized agro-entrepreneurs. The section *Export Handbooks*, in particular, seeks to share ideas and concepts in order to facilitate decision-making processes for those who wish to participate successfully in international markets.

This handbook has been prepared as a brief practical guide for exporters and describes basic aspects that should be considered when signing a contract to formalize business relations with a client. We trust that this publication will serve as a valuable and permanent resource for small and medium-sized agribusiness companies, and we reiterate IICA's ongoing commitment to strengthening their competitiveness and improving their living conditions.

Sincerely,

Miguel García Winder
Director of Agribusiness Competitiveness
Inter-American Program for the Promotion of Trade,
Agribusiness and Food Safety
IICA Office in Miami

The subject of contracts has always aroused concern, questions and sometimes even fears among entrepreneurs, exporters and consultants, due to bad experiences – their own and other people’s— and to the difficulty of understanding language written for and by lawyers.

In some countries, formalizing a business arrangement by signing a contract is not always standard practice. Nevertheless, we routinely sign contracts for services, for example when acquiring a mobile telephone service or a credit card. In international commercial transactions, contracts become even more essential, although some companies tend to play down their importance, either through ignorance, or failure to devote enough time to it or, simply, because they consider it unnecessary. How many commercial operations have ended in failure due to the lack of a signed document that clearly sets out all the rules of the game?

This handbook has been prepared as a brief guide for exporters and explains the main points to consider when drawing up contracts. The legal framework of the United States is used as a mayor reference in this text. It also contains fairly complex legal terminology, because although we have tried to be as clear and didactic as possible, we do not consider it helpful to avoid terms and concepts that entrepreneurs will necessarily encounter at some point, in the real world. Through this guide we hope to generate the basic knowledge required to understand one of the most important and decisive aspects of international business: contractual relations.

The text is divided into two parts. The first part offers an introduction to contractual matters; the second focuses on four types of contracts: a contract of sale, a distribution contract, an intermediary or commission agent contract, and, finally, a licensing agreement. At the end of this section we include a series of recommendations on the negotiating process itself, which may prove indispensable for those embarking on their first commercial ventures.

SECTION I

CONTRACTS IN GENERAL

What is a contract?

A contract may be defined as a “pact or agreement, oral or written, whereby two or more parties bind themselves to certain obligations, and whose fulfillment is legally enforceable”.

From a more practical perspective, a contract may be summarized in the following four basic points:

- It is an agreement, generally in writing, between two or more parties. For the purposes of our analysis, unilateral actions (by one party), are not considered to be contracts, although these may exist as such in the general legal context.
- It contains rights and obligations. The contract document establishes the rules that are to be followed by the parties.
- It serves to regulate business relations (for example, a sales agreement or a distributorship agreement).
- It is generally for a specific period of time (the duration of the contract is often specified).

Is a contract necessary in a commercial relationship?

That depends on several factors, particularly if international trade or export activities are involved. First of all, it is important to consider the type of transaction that is to be guaranteed. A simple cash sale for a small sum of money - even to an external market – may not require a formal contract, with a document written and approved by the parties. In fact, business invoices often serve as contracts and this is an accepted practice in many countries.

In cases involving larger sums of money, a greater commitment and greater risk, we do recommend drawing up a contract. Clearly, this will depend on the company’s size and on the financial impact of the operation - what may be a very small sum for one company may represent important working capital for another. Signing a contract is recommended in the following cases: i) in an agreement for the distribution of products for a six-month

period, in which an exporter commits a certain amount of working capital and invests in new machinery or inputs and needs guarantees that orders will be placed; ii) when the monetary value of the exports is very high in relation to the company's capital. In these cases it is advisable to seek legal advice in order to select the most appropriate contract model and to examine all possible scenarios of the commercial relationship, particularly those of non-compliance, and establish the means of resolving these issues.

It is also important to consider where the contract is to be applied and identify the possible advantages for exporters. Some jurisdictions may be attractive because of their proximity and the low cost of using these (in this case, the jurisdiction of the exporting company); others may be chosen for their reliability and certainty in applying the law (the jurisdiction of the country of destination, e.g. the United States). In the event of disputes arising in a business relationship, the parties may also have recourse to alternative dispute resolution methods (commercial arbitration).

Finally, for the purposes of validity, it is essential to find out whether the contract documents must be registered, especially in the country of destination¹.

Are there general regulations applicable to international business contracts?

In 1980, the United Nations (UN) convened a conference in the city of Vienna to regulate the issue of contracts for the sale of goods. The resulting document, entitled "The United Nations Convention on Contracts for the International Sale of Goods" (Vienna Convention of 1980), contains a series of basic commercial rules that apply to contracts for the sale of goods, particularly in cases where the parties have not defined most of the issues that affect their business relations.

The United States, a common destination for exports, has been a party to the Convention since 1980. This set of rules—the Convention— is limited to sales and, following the principles of "contractual freedom and autonomy", the parties may, through a written document, determine the rules that

¹ By way of example, as a general rule, in countries whose legal system is based on Anglo-Saxon law (common law), e.g. the United States, contracts of a private nature, such as sales or distribution contracts, are not registered in the commercial records, except in the case of particular states and are beyond the scope of this document.

will govern their commercial relationship, without making use of these international legal instruments.

Other international regulations that may be applied are known as INCOTERMS (**International Commercial Terms**), a set of commercial terms used by buyers and sellers to conduct all types of international commercial transactions, regardless of the product, the destination, the means of transportation or the type of insurance chosen. These terms are issued by International Chamber of Commerce (ICC), and were last revised in the year 2000. The terminology is internationally accepted by governments, customs authorities and by all types of companies and business people around the world. Terms such as FOB or CIF are immediately understood and accepted without question in trade negotiations. The Vienna Convention of 1980 and the INCOTERMS both have a direct bearing on sales and distribution contracts, but not on other agreements, such as licensing contracts. This topic is discussed further on in this document.

What are the contents of a contract?

A contract contains a series of clauses setting out the details of the business relationship and the commercial operation, such as the names of the parties, the price of the products, quantities, penalties, etc. The most usual contents of a 'contract type' are briefly described below:

Headings: This is the title of the contract; for example: "Sales Agreement", "Distributorship Agreement", "Brokerage Agreement", etc.

Naming of the Parties: This clause identifies and describes the parties, i.e. the persons and/or companies signing the contract.

Representation: This clause follows immediately after the naming of the parties and states the attributes of the person who appears to sign the contract, together with his/her attributions to execute said act. Special attention must be paid to this, since it determines the person's capacity to represent the counterpart². For example: "*Juan Rulfo, of legal age, a company executive, acting in his capacity as director and representative of the company LIMES GIANT S.A.*". It is of particular interest to the seller (export firm) to

2 Many Latin American firms have had bad experiences because they have not paid due attention to this point. Consequently, they have signed documents with people who have then defrauded them.

ascertain that the buyer has the necessary authority to act, as the person in question may not have the decision-making capacity or the degree of responsibility to assume contractual obligations.

Definitions: A brief glossary of terms that appears in the contract, establishing what is to be understood, for example, as *products*, *gross income* or *territory*. The inclusion of definitions is a very common practice in contracts signed with counterparts from Anglo-Saxon countries (common law countries, for example, the United States or Canada), so close attention must be paid to these when negotiating.

Term: The duration or period of the agreement, the commencement and termination dates; for example, a contract of sale may state that the products will be delivered within one month; or that products will be distributed for a period of six months; or that a license may be used for one year.

Terms of payment: This clause determines the method of payment, the amount, the frequency and the place where payment will be received for the transactions carried out. No problems arise in the case of cash payments, but it is also possible to agree on a system of staggered payments (progress payments), upon delivery of the goods.

It is worth noting that this is often one of the most contentious clauses - even when no contract is involved - due to the naturally opposing interests. The seller (the export company) will be interested in immediate payment, prior to dispatching the goods. The buyer (import company), on the contrary, will likely prefer payment upon delivery of the products. This point is explained in greater detail further on.

Penalties and indemnity: the parties determine the type of penalties that will be applied in the event of breach or default of the contract and how to compensate the other party for the damages incurred by said default. It is important to pay attention to this clause - sometimes only the importer imposes conditions. It is important that our party (the exporting firm) is also able to invoke this clause.

Applicable jurisdiction: As noted previously, this clause establishes the laws and procedures to which the parties may submit a problem or major claim arising from any breach of contract. Returning to the issue of contractual freedom, the parties may agree, for example, that the law of the country of destination will be applied (for example, the United States), but under the

rules of the aforementioned 1980 Vienna Convention. Or, they may opt for the laws of a specific US state.

Arbitration: In addition to the previous clause, the parties may submit their disputes to arbitration procedures. This clause establishes the type of arbitration, the number of arbitrators and the jurisdiction (location) where the arbitration will take place. For example, the parties may decide on the jurisdiction of the State of Florida, based on arbitration rules of the International Chamber of Commerce. The use of arbitration has gained much support, since arbitrators are most knowledgeable about the rules that govern international commerce, which are often unknown even to the judges of the different countries. A further advantage of using the arbitration clause is its international character.

Another UN document that discusses the recognition of foreign arbitration rulings is the New York Convention of 1958³. In very special circumstances, and when the case merits it (particularly if large sums are involved), a party may invoke the jurisdiction of the International Chamber of Commerce, one of the most respected arbitration bodies.

Confidentiality: The parties determine the terms and issues that are not to be disclosed, under any circumstances, to persons or entities outside the agreement, including the counterpart's commercial or financial information, manufacturing secrets or product details.

Amendments to the contract: In this clause, the parties determine the way in which any amendments or addenda will be made to the contract, if necessary; for example, extending the contract term, extending the payment period, a change in the address of delivery, etc.

Force Majeure: the parties may determine that certain situations, such as natural disasters, wars or accidents, constitute reasons of *force majeure* that impede the normal fulfillment of the contract and excuse them from liability.

3 The New York Convention, signed in 1958, recognizes arbitration rulings or awards issued abroad. For example, companies from Colombia and Mexico have a commercial dispute that they submit to arbitration in Mexico, but the resolution must be effective in Colombia. If both countries are signatories to the New York Convention, the procedure for recognizing the arbitral award is based on said Convention and not on the local law of both countries. This serves to avoid a longer procedure caused by the difference in the laws of each country (the New York Convention provides common rules).

Apart from these 'type clauses', are there other issues to be taken into consideration?

Yes, of course. In general, it is important to know the size or strength of your counterpart before negotiating a contract. It is not advisable to do business with a company, either individual or corporate, that is so large that it will be too dominant, or so small that ultimately it will be of little interest to your business. Determining the counterpart's financial standing is crucial. The last thing we want when entering into a commercial relationship is to have financial difficulties or problems with payments, especially when doing business abroad.

It is also important to assess the counterpart company's knowledge of your product or sector in the country of destination. For example, a company in El Salvador that is interested in exporting frozen fruit to the United States finds a transport consolidator to ship its products – one with experience in transporting dairy products, who wishes to consolidate our cargo with creams and cheeses. Ultimately, this business arrangement may not benefit the exporter, because the knowledge of the importer is in a different type of product.

In addition to the points mentioned, there are other clauses that, by their very nature, depend on the type of contract to be signed. For example, the *exclusivity* clause may feature prominently in a distribution contract, while clauses restricting competition may be included, not only in distribution contracts, but also in licensing or franchise contracts. Clauses establishing the *percentages of royalties or commissions* generally appear in intermediary or agency contracts. These cases are discussed further on in this document.

SECTION II

SOME OF THE MOST COMMONLY USED CONTRACTS IN INTERNATIONAL TRADE

It is impossible to cover all the contracts we can find in international trade in this document. However, we can mention four types of contracts that are of special relevance to exporters:

- Sales Agreement
- Distributorship Agreement
- Brokerage Agreement
- Trademark License Agreement

Sales Agreement

A Sales Agreement is a document that establishes a relationship in which one party is obligated, with respect to the other, to deliver a product or service in exchange for the payment of a specific sum of money.

This kind of contract is very common in the sale of tangible goods, such as a house, a car, or an item of furniture, and in consumer products such as food, clothing, and construction materials, all defined in terms of quantities, qualities and prices.

It is worth noting that a sales agreement does not always take the form of a contract document as such, i.e. written on a piece of paper and signed by the parties. Often it is sufficient to have an order for a particular product and the receipt of the respective invoice to consider that a sales contract has been concluded. In fact, the invoice itself often serves as a contract⁴; in certain cases, only electronic messages are used, such as e-mail or faxes, in which quantities, qualities and prices are established. All these documents may, at some time, form part of the contract or even become the contract itself.

4 Today is a common practice to print the terms and conditions of the contract of sale on the back of the invoice itself.

In international trade, this practice is not very different. However, there may be added difficulties, such as dealing with another language, which could slow down communication and the understanding of the documents. Furthermore, as mentioned in Section I, there may be differences regarding the application of legal rules, unless the issue of applicable jurisdiction has been specified in a document (problems may arise regarding the validity or not of simple invoices or faxes issued in another country for the purposes of collecting payment).

For example, the aforementioned Vienna Convention of 1980 considers that a contract of sale is concluded with the receipt of an offer, and its signed acceptance by the offeree, once it is returned to the offeror⁵. These aspects should be considered in order to effectively use the contract documents, once we have decided to proceed with the business deal.

There may also be practical problems derived from the application of new technologies in business, such as the e-commerce of products and services via the Internet.

Electronic trade (e-commerce) has revolutionized international buying and selling practices. It offers the option of buying and selling through the *World Wide Web* or *www*, using number codes and passwords, allowing consumers to place orders and make payments for goods and services, and receive these, all from a computer. This system is increasingly used to market tourism products and services and also for the purchase and sale of airline tickets, but has yet to be developed fully in the sale of tangible products.

What other clauses should be taken into account in a contract of sale?

In addition to the general clauses mentioned in Section I, the following are of special interest:

Quantity / Quality:

This clause describes the type of goods to be delivered, as well as the quantity, size, weight, quality standards and other specifications. When negotiating

5 Hence the importance of stating the legal rules applicable to the contract.

with a buyer, exporters must make sure that their company has the capacity to fulfill these conditions. For example: an order is placed for coffee grown at a certain altitude or from a particular area and, due to a shortage of the ordered product, it is mixed with coffee of a different quality or origin. This action would justify terminating the contract, with liability for the exporter.

In some cases, the product specifications are not included in the contract document, but are stated in the quote or offer letter presented. Therefore, we might find a clause stating: *“The products subject to the present contract shall be those stipulated in the Letter of Offer dated May 1, 2006”*. This often occurs when the list of products is relatively large or when the text is even longer than the contract itself. This clause does not always appear separately, but may be incorporated into other clauses referring to the product’s specifications or *lack of conformity* (see the model contract attached to this document).

Terms of Delivery:

This clause determines the time in which the goods are to be delivered once the order (the purchase order) has been received. This is another critical clause for exporters, as it requires them to faithfully comply with the delivery dates; otherwise, the contract is deemed not to have been executed, which may give rise to claims on the part of the buyer.

For exporters, defining the periodicity of orders is key to financial planning and managing inventories. The following example illustrates the importance of properly clarifying contract details. An export contract stated that the importer would purchase 1.5 MT of natural dyes during the contract period, in this case, one year. The contract was signed, let us suppose, in March of 2005, and the exporter expected to receive a first order during that year—something that did not happen. When asked to comply with the contract, the importer argued that he was not obliged to purchase anything before the one-year term was completed, in other words, March of 2006.

INCOTERMS:

INCOTERMS determine how goods are to be delivered to a buyer, as well as the seller’s responsibilities until the moment of delivery. These rules set out the obligations, risks and costs to be assumed by each party. EXW involves the least risk and cost for exporters, while DDP implies the least risk and cost for importers. (some wording is missing here)

Failure to mention the respective INCOTERM 2000 may result in financial losses for a company, as trading practices may vary from one country to another. Example: an export firm wishes to sell using the FOB price, but fails to specify this point in writing, either in the contract documents or in the appendices, and sells to a country where the business custom is to receive goods with CIF prices – a practice also accepted by the country’s Commercial Tribunals. To complicate things further, the parties have decided to apply the rules and customs of the country of destination. In this case, the export firm would be obliged to pay shipping and insurance costs, even though the agreed price was based on the value of the goods in the port of origin. Remember, in international commerce, usages and business practices (formally known as *Lex Mercatoria*) play an essential role⁶.

The INCOTERMS consist of thirteen standard acronyms that are listed below:

GROUP E = Departures

EXW (Ex Works)

- The Seller’s only responsibility is to make the goods available for export at his premises.
- Sellers are advised to define who is responsible for loading the goods into the vehicle provided by the Buyer, and to bear the risk of loading.

GROUP F = Main Carriage Unpaid

FCA (Free Carrier)

- The Seller delivers the goods, cleared for export, to the main carrier selected by the Buyer at the agreed place.
- The Seller is obligated to load the goods if the place of delivery is the Seller’s premises. If the delivery occurs in another place, the Seller is not responsible for unloading the goods

GROUP C = Main Carriage Paid

CPT (Carriage Paid To)

- The Seller contracts and pays for the transportation of goods to the named destination.
- The Buyer bears all risks for loss or damage once the goods have been delivered into the custody of the nominated carrier. The Seller should clear the goods for export CIP (Carriage and Insurance Paid To)

6 The *Lex Mercatoria* is a set of commercial rules and customs originally used by the merchants of medieval Europe. We could say that it forms the basis of modern commercial law. Many of these rules are still used today in maritime law.

- The Seller pays transportation and insurance costs.
- Title and risk pass to the Buyer when goods are delivered to the carrier by the Seller.
- The Seller is only required to contract minimum insurance cover and pay the corresponding premium.
- The Seller should clear the goods for export

GROUP D = Arrivals

DAF (Delivered At Frontier)

- The Seller's obligations end when goods have been delivered to the named border point but, but before clearing customs in the adjoining country.
- The Seller is not responsible for unloading.
- Applies mainly to overland transportation.

DDU (Delivered Duty Unpaid)

- The Seller must deliver the goods to the Buyer at the named place in the country of destination.
- The Seller is not responsible for unloading the goods.
- The Seller must pay the costs of delivering the goods to the named destination.
- The Buyer pays any additional costs (duties, taxes and other official expenses).

DDP (Delivered Duty Paid)

- The Seller must make the goods available to the Buyer, cleared for import, at the named place in the country of destination.
- The Seller is not responsible for unloading the goods.
- The Seller must cover the costs and risks of delivering the goods to the named place, including customs duties, taxes and other official expenses.

Maritime transportation

FAS (Free Alongside Ship)

- The Seller must deliver the goods alongside the ship at the named port of shipment.
- The Buyer assumes all risks and costs from this point on.
- The Seller must clear the goods for export.

FOB (Free On Board)

- The Seller fulfils his delivery obligations when the goods have passed the ship's rail at the named port.
- The Buyer selects the carrier and pays the shipping costs.
- The Seller is responsible for clearing the goods for export.

CFR (Cost and Freight)

- The Seller must pay the costs and freight to deliver the goods to the named port of destination.
- The Buyer bears all risks and costs after the time of delivery. The Seller is responsible for clearing the goods for export.

CIF (Cost, Insurance and Freight)

- The Seller pays shipping and insurance costs to the port of destination.
- The Seller is only obliged to obtain minimum insurance cover.
- The Seller is responsible for clearing the goods for export.
- The Buyer could make his own extra insurance arrangements

DES (Delivered Ex Ship)

- The Seller fulfils his obligations when the goods have been delivered to the Buyer on board ship.
- Does not include import clearance at the port of destination.
- The Seller has no obligation to unload the goods.
- Applies only to maritime transport.

DEQ (Delivered Ex Quay)

- The Seller's obligations end when the goods have been made available to the Buyer on the quay (unloaded).
- The Buyer is responsible for clearing the goods for import, together with costs after the goods have been unloaded.
- Applies only to maritime transport.

Terms of payment:

This clause stipulates the amount to be paid for the goods exported, and the method of payment. Obviously the best method of payment is always cash, although in international trade this is the exception, rather than the rule. Sometimes a simple post-dated check is sufficient, if the buyer is known to the seller and there is certainty of payment. Other times the clause may stipulate advance payment by check with a warranty (bill of exchange) in the exporting country. If the operation is fairly large, one option would be to open a letter of credit on behalf of the buyer and in favor of the exporter. Obviously, this will depend on the volume or price of the products: we cannot ask for a letter of credit for a shipment valued at US\$1,000.00, knowing that the letter of credit may cost the buyer around US\$300.00. This matter should be carefully analyzed by exporters, preferably with the help of an expert on foreign trade.

The most commonly used forms of payments in international transactions are:

- a) **Payment with a post-dated check:** delivery of a post-dated check for a percentage of the value of the merchandise (generally 50%). This practice is used with trusted clients, with proven capacity of payment and whose dealings with other companies are known.
- b) **Payment against delivery of shipping documents:** payment is made when the buyer has made available to the exporter a restricted account in a correspondent bank in the country of origin, so that exporters may collect payment upon delivery of documents proving the dispatch of the goods.
- c) **Letter of credit:** the buyer makes available an irrevocable letter of credit through a bank in the country of the exporter, so that the latter may collect payment for the goods through this letter of credit. Sometimes, payment may be conditional upon the receipt of the shipping documents for the goods in the buyer's country, before issuing the payment order, but the money will always be available. A payment order is rarely issued prior to shipping the goods, although this practice is possible.

Distributorship Agreement

In distributorship agreements we may encounter terms such as *distributor*, *agent*, or even *broker*, which tend to confuse matters because they are used as the same words one to another. This confusion is even more apparent when contractual relations are established with English-speaking counterparts. The following table attempts to clarify these terms.

Equivalent in English	Characteristics
Distributor	Person or company that buys merchandise for his own business, under contract, for the purpose of distributing and selling the product of the Principal (export company) in the country of destination.
Broker	Person who has no obligation to purchase from the exporters, but who introduces possible buyers. For this service he/she receives payment plus a commission for deals made.

Having clarified these terms, let us now consider the distribution contract.

A distributorship agreement is signed between two parties, one called the Principal, the other, the Distributor. The Principal agrees to sell his products to the Distributor, in a market of destination. The latter (the distributor), having paid to import those goods, may resell them in the market of destination at the price suggested or at the best price for that market.

Independence is an important feature of the relationship between the distributor and the principal, i.e. there is no contractual or job dependence. The seller does not pay the distributor and vice-versa. In other words, the distributor does not need to offset other payments – he only pays for the price of the goods.

This is certainly one of the most common contracts in international trade and is now seen in nearly all commercial activities, for example, in the sale of cars, electrical appliances, clothing and accessories that are not manufactured in the country of destination (the importer's country), but are distributed in that country by a local company. Sometimes these goods are purchased from the distributor by other traders for resale in the national market.

A distribution contract is an effective and relatively inexpensive mechanism that enables exporters to sell their products outside the territory of origin and have a presence in the international market. Like any transaction, it has advantages and disadvantages.

Undoubtedly, one of the greatest advantages for the seller-exporter is the limited financial risk involved in this export modality, since the distributor assumes the risk. One of the main disadvantages, however, is the exporter's lack of direct access to the market of destination, which is left entirely in the hands of the distributor. Consequently, the knowledge of that market also remains in the hands of the distributor-importer. The importance of this aspect will depend on the exporter's strategies and expectations.

As noted at the beginning of this section, distribution contracts tend to be confused with the intermediary (or commission agent) contract. In addition to the possible terminological confusion, this often occurs because distributors claim the right to demand a series of indemnities normally reserved for commission agents, in addition to the indemnities to which they are already entitled. Remember, in principle, there is no dependence between the parties, simply a business relationship. However, this situation will be more clearly defined according to the laws applicable in the country of the distributor/ importer.

Below are the types of clauses that can be added to the general clauses, used with some practical examples, and to which special attention must be paid in distribution contracts:

Territory: this specifies the territory in which the principal's products may be distributed. It is an important clause and must be clearly defined, since a territory - even within the same country- may be covered by several distributors. Let us take the classic example of the United States, a vast and diverse territory. Let us suppose that your company finds a distributor of processed foods for the cities of Washington D.C. and New York. After contacting the distributor, you discover that he only has the capacity to cover those two cities. It would be illogical to consider giving him the distribution for the whole of the United States. An error of this nature in the text might immediately close off the possibility of finding distributors in other states. In this case, the assigned territory should include only those two cities, leaving open the possibility of doing business in other areas. We should consider also the perspective of the distributor, who will wish to benefit, for some years, from the investment and effort made in introducing a new product into the market.

Exclusivity: this clause serves to grant- or not - exclusive distribution rights in the designated territory. By exclusivity it is understood that the distributor will be the only agent authorized to sell the products of the principal (export firm) in the specified territory for the duration of the contract. A practical example of this situation would be the following: a distributor of frozen fruit pulps is chosen for the State of Florida. The distributor requests exclusive rights to distribute that product in Florida due to very specific situations (e.g. a shortage of the product) for a period of one year, and the principal grants him that right. During that year, the principal will not be able to export his product to another distributor for sale in the State of Florida - not even if the other distributor offers a better price for the same product. This situation will not apply to other distribution contracts in states other than Florida.

The issue of exclusivity has many variables, particularly regarding to indemnities for early termination of the contract that may be attributable to the principal or considered to be his responsibility. The amount of the indemnity may be agreed upon or requested by the distributor in the contract itself, or else, it may be determined by the existing legislation on distribution contracts in the country of destination⁷. Obviously, another issue that comes

⁷ One case worth mentioning is that of the large indemnities which, by law, are usually paid at the end of a distribution contract in the Dominican Republic. However, this situation is likely to disappear with the application of various international trade agreements and the rules of the World Trade Organization (WTO).

into play is the distributor's *performance* in marketing the product. As is to be expected, it is not in the exporting company's interest to grant this right, if the distributing company is unable to meet the agreed targets.

The territory clause and the exclusivity clause are very closely linked, and are usually found next to each other in distribution contracts. Sometimes the following wording is used: *"The Principal grants the Distributor exclusive distribution rights in the designated territory for a period of two years"*. By way of a warning, when initiating export activities, it is advisable to prepare a distribution contract for a short period of time (one or two years), in a specific territory (not too large - it is best not to generalize) and without exclusivity (unless the product is being consolidated in the market).

To further protect the principal/exporter, a clause may be included that to some extent prevents unfair competition that may be generated by the distributor itself. How? By prohibiting the distributor from selling competing products – unless there are very special circumstances that justify this - (e.g. when the distributor is the sole importer of that class of products in the selected territory).

This clause is not included in the model contract attached to this document, as it is generally the concern of the distributor.

Minimum orders: this clause may serve to compensate for the assignation of territory and the granting or not of exclusivity. It generally establishes an initial minimum order for the products of the principal/exporter. It may also determine subsequent minimum orders, which, in general, will be submitted in a phased manner and in accordance with a reference schedule (subject to changes). We find wording such as *"The distributor undertakes to place an initial minimum order equivalent to \$ (amount in the transaction currency) and subsequent minimum orders equivalent to \$ (amount in the transaction currency) in accordance with the purchase order schedule agreed by the parties"*. Obviously, the requirement for minimum orders will not apply in cases of force majeure that are not the parties' responsibility. In the distribution contract model, this clause appears as: "Activities and minimum orders":

Guarantees: this clause is of greater interest to distributors than to exporters, but must be carefully reviewed by exporters to avoid exaggerated wording by the distributor. It specifies the types of guarantees that the exporter will offer the distributor as regards the quality of the goods, in the event of any claim made by the distributor or by a final consumer. This clause also serves as a marketing tool, since the principal/exporting company wishes to impress on

the client that he/she is buying a high quality product. However, exporters should carefully assess this type of liability and determine the extent to which the product can be guaranteed (i.e. consider duration, perishability, standardized use, etc.)

Sales and performance reports: export companies use this clause to stipulate the type of information they require from distributors in order to keep update of what is happening to their products in the external market. This includes information on sale prices to the final consumer (where possible), the products with greatest demand (if exporting a group of products), strongest sale points and contacts to bear in mind in case the exporter's representatives should visit the place. It is not always easy for exporters to decide on the type of information that they should request from distributors, who generally show a certain reluctance to hand over their hard-earned information to the principal who has risked relatively little. It is good idea for exporters to address this issue with the distributors, explaining their point of view, i.e. not as an act of espionage but as an effort to help in the promotional effort or to improve service to the client who, in this case, is the distributor himself.

The contract model presented in the annex contains these terms in the clause "Records".

Terms of delivery (INCOTERMS) and payment: the subject of INCOTERMS has already been mentioned in the section on sales contracts. With regard to payment, it is important to remember that in distribution contracts, distributors often request a certain period of time to pay the principal for the goods. The principal should bear in mind that the distributor must invest in logistics in order to market the goods and, if a new product is involved, it always takes time for sales to "take off".

It is common for distributors to request a 30-day period, some type of credit or other form of payment, but always after the delivery date. This point was also discussed in the section on sale contracts and, as mentioned earlier, several criteria must be borne in mind. Although this aspect is more closely linked to the tactics of commercial negotiation, and must be transcribed into the appropriate language by a legal professional, it should not be overlooked, as it is the capital input for export activities. In short, the method of payment to be used will depend on a careful analysis of the situation.

Intellectual property: although it is not always the case, most companies are keen to exploit their product's trademark or own brand, especially when a processing component is involved. The intellectual property clause is included with the aim of protecting the exporting company's ownership rights and/or exclusive rights over the product's trademark or identity. In general, the exporting company establishes that the rights over its brands and trademarks will be the exclusive property and use of the principal/exporter and not of the distributor/importer, and that the latter is authorized to use said trademarks and brands only for the purposes of carrying out the distribution in the best possible way. This implies an additional effort on the part of the exporters to properly protect and register their intellectual property rights in the countries of destination⁸.

There have already been some cases of distributors who have appropriated the intellectual property rights of some Latin American brands and trademarks: having discovered their good name and reputation they proceeded to register them in their favor. Of course, these rights should be first protected in the exporting country (of origin), before trying to protect them abroad.

Brokerage Agreement

The **Brokerage Agreement** or commission agent (also known as broker in some countries) contract is another of the most commonly used mechanisms to generate sales in overseas markets. In this type of contract, a relationship is established whereby a person or company acts as a sales agent on behalf of the exporting company (principal), introducing its products to potential buyers in the external market, in exchange for a commission based on the value of the business deals arranged and paid to the principal.

As with the distributor, this relationship does not imply a formal interdependence between the principal and the agent intermediary, unless the laws of the country of destination state otherwise. The mechanism of commission agent or intermediary is therefore very useful to companies that are launching their export operations.

This type of contract is ideal for small companies with little or no experience in international trade, as it allows them to access international markets without having to make large investments. Everything is left in the hands

⁸ In the specific case of the United States, products from any part of the world can be registered online through the website of the Federal Office of Brands and Patents. However, the guidance of a trademark agent or a lawyer with experience in intellectual property rights is always recommended.

of the brokers, who “manage” the companies’ exports. In general all transactions are agreed upon beforehand, taking care to properly determine the minimum orders and to ensure that the exports are profitable.

However, it is essential to find out about the broker’s reliability and experience in managing and marketing the type of products exported by the company, before leaving the entire operation in his/her hands. A careful assessment of the situation should be made beforehand, including a legal analysis of the commitments and documents required to export goods.

As noted previously, some confusion may arise between this contract and a distribution contract. The following clauses, already described, also apply in the case of an intermediary contract:

- **Territory:** this clause specifies the physical or geographic areas in which the agent will carry out business transactions.
- **Exclusivity:** agents generally request exclusivity rights, with the idea of obtaining some form of monetary compensation at the end of the contract period. In the case of brokers, exclusivity may be advantageous in relatively small markets, since it may act as an incentive.
- **Reports:** these reports mainly refer to business contacts and the movement of goods. In the case of a commission agent, is more likely to obtain this information. Remember, the broker’s task is to act as an intermediary between sellers and buyers.
- **Intellectual property:** the same terms and conditions apply as in the distribution contract (this heading appears in the model contracts under the name of “Brand Rights”).

The issue of price is not critical in this type of contract, as the product is not being sold to the broker, whose role is solely to introduce potential buyers to the export company. Rather, the idea is to establish price guidelines, in writing, as a basis for negotiation (if the case arises), and to have a margin for discussion with potential buyers.

In this type of contract we also find the following clauses:

Administration of Orders: also known as “Purchase Order” or simply, “Orders”. This clause is critical, since it establishes the procedure for sending, receiving and clearing orders through customs. It also determines the type of penalty to be applied against the intermediary if he or she fails to provide information about the orders to the principal, within the agreed periods of

time and according to the agreed mechanisms. The wording of the clause may be: *"The Agent/Intermediary shall send the manufacturer/exporter all orders, at least _ days after receiving said orders"*. This type of clause is often included in the general provisions referring to the obligations of the broker or intermediary.

Commission: this clause determines the percentage that the broker will receive for each business transaction arranged and payment made to the export company, as well as the period in which this commission must be paid. This clause is almost inevitable in this type of contract, unless the broker's role is changed to one of "agent representative", in which case he would receive a salary or fee for his work, thereby establishing a relationship of dependence with the company. For example, a company finds an agent to market frozen products in Houston, United States; he is hired as a broker and is paid a 12% commission for each deal arranged and paid for, in bimonthly installments, once the payments from the sales executed have been received. The percentage and periods of payment may vary according to the terms negotiated by the parties.

Terms of performance: this clause requires the agent to meet certain targets or goals in relation to the business conducted on behalf of the export company, together with a minimum volume of orders equivalent to "x" amount of sales. The idea is to find an agent who will seek out more and better contacts and obtain as much business as possible for the export company, so that he/she can maintain his role as commission agent. This clause is necessary as it is linked to the commission fee and may condition the payment of commissions to the agent. These provisions seldom appear as a separate clause in the contract, but instead are contained in clauses such as "Orders" or "Origin of the commission", in which the agent is required to achieve a certain level of performance to obtain a better commission.

Indemnity for termination of contract: this is the most interesting clause to the agent and the least appealing to the principal. It stipulates the monetary compensation to which the intermediary is entitled once the contractual relationship has ended and all the terms and conditions of the contract have been fulfilled.

Promotional Materials: this establishes the logistical efforts made jointly by the exporting company and the intermediary; it covers aspects such as communications, advertising, sample materials, etc. This clause generally focuses on marketing activities, which are rarely covered 100% by the agent.

NOTE:

The clauses on indemnity for termination of contract and exclusivity have been omitted, both in the distribution contract and in the intermediary contract, because this type of clause does not really form part of the contract. First, of all it is subject to the laws of the country of destination, which are often enacted to protect distributors or agents. It is no use including clauses invoking the non-payment of indemnity in the case of contract termination, if the laws of the importing country already establish these parameters, or take for granted the right of exclusivity. Secondly, from the exporter's perspective, monetary compensation or indemnity for distributors and agents should never be among the main points in these contracts. If the distributors or brokers are concerned about this issue, then they should be the ones to propose the appropriate wording and proceed to negotiate with the counterpart.

Trademark License Agreement

A trademark license agreement or contract (sometimes called "franchise, though these are really two different terms) is an agreement whereby a company, known as the "Principal" or "Licensor", grants a number of rights to the other party called the "Licensee". This contract may cover some or all of the following issues: use, manufacture, distribution, promotion, marketing and sale of products owned by the Principal, in a given territory for a specified period, in exchange for a percentage or share of the business carried out.

It should be noted that a licensing contract differs from a franchise contract in the following aspects:

- A licensing contract grants rights, separately or together, to use, manufacture, distribute and sell products that are already available in the original market of the principal. In fact, many of the consumer goods produced by multinational companies found in the Latin American market have become established through this contractual mechanism. The carbonated beverages of Coca Cola, or clothing brands such as Pierre Cardin, are manufactured in the country under a "license" issued by the owners of these internationally prestigious brands.
- A franchise contract aims to sell a package of knowledge (termed the "know how" of a particular business), granting a series of rights to independent contractors who generally pay the principal an initial

sum of money – usually fairly substantial - to obtain the franchise. For example, the fast food chains such as Subway or Burger King.

Having explained these differences, it is important to emphasize that, although this type of contract may not be of much interest to small and medium-sized exporters, it is interesting to know the kinds of clauses included. Apart from the general provisions, they also contain the special clauses mentioned earlier in this document:

- **Territory:** as in a distribution contract or an intermediary contract, the license holder (licensee) is assigned a territory in which to exploit the license.
- **Exclusivity:** exclusive rights (the only one authorized to use the license) granted to the Licensee, during the contract period in the designated territory.
- **Terms of Performance:** certain goals or targets are established in relation to the business.
- **Logistical support:** refers to marketing and safeguarding the identity of the licensed product.

In addition, we find the following clauses:

Intellectual property: although this point has been discussed previously, in the case of licenses there are additional parameters. In fact, this clause establishes that all processes, formulas, brands, logos, advertising slogans and trademarks, shall be the exclusive property of the principal and for no reason may the licensee register these under his name or market them, distribute them or profit from them in any territory other than the one assigned in the agreement. Thus, a licensing contract only allows the licensee to exploit these rights under the specified terms, and always under the supervision of the principal, in order to maintain the quality standards and image of the products in question.

“Know how”: this clause really forms part of franchise contracts, and is generally included in a special paragraph or section after the intellectual property clause. It describes some parameters related to the “knowledge” and “procedures” of the products to be licensed. Given the confidentiality of the formulas involved, the procedures are not described in the contract itself (it should be noted that publication or registration of a contract document may be mandatory in some countries). The issues of intellectual property and “know how” are usually described in greater detail in an annex of a

private nature, known only to the signatories. Infringing the confidentiality of these clauses may lead to major monetary claims by the injured party.

List of products: This clause includes a detailed list of the products that are to be produced or distributed through the licensee. The licensee may not sell any product of the principal that is not included in that list; doing so may lead to an immediate claim on the part of the principal and may be considered a breach of contract. For example, a manufacturer of fruit jellies grants a license to a company abroad for two of its jelly varieties, strawberry and pineapple, but not for its guava and orange jellies. Consequently, these products may not even be mentioned by the licensee unless he obtains written authorization from the principal.

NOTE:

The three abovementioned clauses are generally attached to the contract as annexes. Given their confidential nature, the content of these documents will only be known to the parties.

Amount or Percentage of Royalties: This is one of the key clauses in any licensing agreement. It establishes the percentage of royalties that must be paid for the products promoted and sold in the external market, once the licensee has received authorization. By royalties we understand the monetary value (calculated as a percentage or at a fixed rate) that the principal company receives for each unit of product sold by the licensee under the terms of the agreement, during the contract period and in the designated territory. There are two ways of calculating this:

- a) As a percentage "x" in relation to the number of product units sold by the licensee.
- b) As a fixed amount (e.g. US\$0.02) for each unit of product sold by the licensee.

In both cases, the principal should set the minimum margin of royalties expected for granting the license to another company outside the principal's usual territory.

Finally, it should be noted that this type of contract does not really involve an export activity as such, i.e. the production of certain products in country "A", which are then sold in country "B". In this case, it is an idea, a formula or a brand that is being exported. A critical point in relation to the licensing contract is that although it may be an effective way of doing business, especially for companies with strategic expansion plans, it means that employment is not being generated and inputs are not being consumed

in the exporting country, as both actions would be transferred to another territory. However, "getting out" and participating in international trade is a valid option for any company.

Practical recommendations for negotiating business contracts

Entrepreneurs certainly know how to do business with counterparts, negotiate prices, deal with different personalities, and much more, through the experience they have acquired in the market they serve. But is this sufficient when conducting business negotiations abroad? Experience in the domestic market is invaluable, but it is worth taking the time to carefully assess one's strengths or weaknesses when negotiating in external markets. In his book, "The Art of War", Sun Tzun states: "The ground should be analyzed in terms of distance, ease or difficulty of travel, and safety". These words could well apply to our products when we send them on a "journey". Below are some thoughts that we consider to be of vital importance to successful international commercial negotiations.

1. Preparing a detailed business plan

One of the most common mistakes made when negotiating abroad is not preparing a business plan in advance, or an agenda with the most important topics to be discussed (price, time, quantities) and the type of meetings to be held (casual, formal, etc.). Without a well-defined plan, we will arrive at our meeting and be subjected to our counterpart's agenda or may not achieve the goals of our business trip.

2. Presenting written proposals (documents)

A well-defined plan also involves preparing a written business proposal that should include pre-established details pertaining to quantities, prices, methods of payment, delivery dates and all the activities that affect our business. Remember, it is not the same to become the first to put a proposal in writing that just allow our future "partners" to get ahead of us and dictate their terms or impose their way of negotiating. We must be the ones to strike the "first blow" at the negotiating table, to show that we are serious and determined to do business. This will considerably improve our image and help us to gain the respect of our prospective partner.

3. Asking for time to consider proposals

In the worst case scenario (we have no proposals of our own or we encounter a business partner who is very astute or strong) we should have sufficient self-confidence, composure and tact at the negotiating table to ask for a reasonable period of time to calmly consider any offers or proposals received. We should give the impression that time is necessary to establish a lasting relationship and a “win-win” situation for both parties. Accepting the first thing that comes our way is not always the best policy, especially if we do not feel well prepared or if we have not done our “homework” with regard to preparing a proposal. It is better to wait a little before saying YES or NO.

4. Anticipating several possible outcomes (either positive or negative)

Even when we have a well prepared plan and use effective negotiating tactics, the results are not always what we expect. Perhaps we may reach an agreement on prices, but the quantities will not be what we expected (or hoped for). Perhaps we wanted a deal lasting two years but only secured a contract for one year. We must always be prepared for such situations, consider the “worst case” scenarios, and have alternative plans to fall back on. This may include changing our negotiating tactics with the counterpart or looking for new contacts to establish commercial relations.

5. Knowing how to pressure and how to concede

This recommendation is closely linked to the previous one: once we are clear about the possible scope of the negotiations, and have considered the possible outcomes, we must be prepared either to pressure our counterpart or agree to his demands. Our response will largely be determined by our interest in doing business, and may prompt us to leave out certain conditions that we wished to impose (probably those that have the least impact on our negotiations). However, we should also bear in mind that we do not wish to weaken or undermine the stability of our business in any way by entering into the international market, and therefore all decisions should be consistent with the company’s policy to maintain its position in the local market.

6. Recognizing our counterparts’ cultural differences

The importance of this point cannot be overstated, especially if we consider that there are major differences between countries, even within the same region. Latin Americans, for example, have a very distinct way of relating to people, but we still find differences between neighboring countries sharing

the same language. These differences are further accentuated when dealing with people from United States, Germany, Japan or Canada, who tend to have a much more reserved personality. It is naïve to expect a counterpart to share our principles, values, mentality and the same way of doing business; this expectation could lead us to fail in our attempts to pursue our commercial ambitions.

7. Above all, do research

All the above recommendations involve an element of research – i.e. finding out about the country, the counterpart, local business practices or customs, the market for our products, etc. As noted at the beginning of this section, we often have experience and knowledge of our own market, but we also need to acquire the same type of knowledge of our chosen external market. Information is often the key to success when selling our products.



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ANNEXES

- Sales Agreement 37
- Distributorship Agreement 41
- Brokerage Agreement 46
- Trademark License Agreement 51

THIS AGREEMENT, dated ___ of 2006 is between:

Parties

_____, (hereinafter "THE SELLER") a company duly incorporated under the laws of El Salvador, and represented by _____, with registered main offices at: _____, fax number: _____ and _____, (hereinafter "THE BUYER") a company duly incorporated under the laws of Florida, United States of America, and represented by _____, with registered main offices at _____, fax number: _____.

Art. 1. General

1.1. These General Conditions are intended to be applied together as part of an International Sale Contract between the two parties herein. In case of contradiction between these General Conditions and any specific conditions agreed upon between the parties in the future, the specific conditions shall prevail.

1.2. Any questions relating to this Contract which are not expressly or implicit settled by the provisions contained in the Contract itself, shall be governed:

- a) by the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention of 1980, hereafter referred as CISG), and
- b) to the extent that such questions are not covered by CISG, by reference to the law of the country where the seller has his place of business.

1.3. Any reference made to trade terms (such as EXW, FCA, etc.) is deemed to be made to the relevant term of Incoterms published by the International Chamber of Commerce.

1.4. Any reference made to a publication of the International Chamber of Commerce is deemed to be made to the version current at the date of conclusion of the Contract.

1.5. No modification of the Contract is valid unless agreed or evidence in writing.

Art.2. Characteristics of the Goods

2.1. It is agreed by the parties that the Seller will sell the following products: ____, and the buyer will pay a price for those products in accordance with article ____.

It is also agreed that any information relating to the goods describe above such as use, weights, dimensions, illustrations, shall not take effect as term of the Contract unless expressly referred to in the Contract.

Art.3. Delivery

The seller should deliver the goods in a period of time no longer than ____ days after receipt of the purchase order duly signed by the buyer.

Art.4. Price

The parties agreed for the price of ____ for the shipment of the goods in accordance to the offer letter received by the buyer on ____ (date) ____.

Unless otherwise agreed in writing, the price does not include VAT, sale taxes or any levy of other kind, and is not subject to price adjustment. The offer price will be considered under the FOB incoterm.

Art. 5. Payment Conditions

The parties have agreed that payment of the price and of any other sums due by the Buyer to the Seller shall be on an advance payment equal to FIFTY PERCENT (50%) of the amount due previous to the shipment of goods, and the remaining FIFTY PERCENT (50%) after 15 days of receiving of the goods by the Buyer. The amounts due shall be transferred, unless otherwise agreed, by teletransmission to the Seller's bank in the Seller's country for the account of the Seller and the Buyer shall be deemed to have performed his payment obligations when the respective sums due have been received by the Seller's bank in immediately available funds.

Art. 6. Interest in case of delayed payment

If a party does not pay a sum of money when it falls due the other party is entitled to interest upon that sum from the time when payment is due to the time of payment, equal to ONE PERCENT (1%) for every day of delay, up to a total delayed charge of FIFTEEN PERCENT of the total price of this contract.

Art. 7. Retention of Title

The parties have validly agreed that the goods shall remain the property of the Seller until complete payment of the price is executed by the Buyer.

Art. 8. Contractual term of Delivery

Unless otherwise agreed, delivery shall be "Free on Board" (FOB).

Art. 9. Late delivery

The Buyer is entitled to claim the Seller liquidated damages equal to 0.5% of the price of the goods for every week of delay, unless force majeure is communicated by the Seller to the Buyer.

Art. 10. Non-Conformity of the Goods

The Buyer shall examine the goods as soon as possible after arrival at destination and shall notify the Seller in writing of any lack of conformity of the goods within 15 days from the date the Buyer discovers the lack of conformity and will have to prove to the Seller that such non-conforming goods are the sole liability of the Seller. In any case the Buyer shall have no remedy for lack of conformity if he fails to notify the Seller thereof within 45 days from the date of arrival of the goods at the agreed destination. Goods will be deemed to conform to the Contract despite minor discrepancies which are usual in its particular trade.

If the non conformity of the goods issue is called upon by the Buyer, the Seller shall have the following options:

- a) Replace the goods with conforming goods, without any additional expense to the Buyer, or
- b) Reimburse to the Buyer the price paid for the non-conforming goods.

Art. 11. Cooperation Between the Parties

The Buyer shall promptly inform the Seller of any claim made against the Buyer by his customers or third parties concerning the goods delivered or intellectual property rights related thereto.

The seller shall promptly inform the Buyer of any claim which may involve the product liability of the Buyer.

Art. 12. Force Majeure

No termination fee will be paid neither by the Seller or the Buyer, and neither party shall have any liability if the agreement is forced into cancellation due to circumstances beyond the reasonable control of that party. The party affected by such circumstances shall promptly notify the other party.

Art. 13. Resolution of Disputes

Unless otherwise agreed in writing, all disputes arising in connection with the present Contract shall be finally settle by the law of ___ and shall be subject to the exclusive jurisdiction of the ___ courts, to which the parties hereby submit, except that a Party may seek an arbitration procedure in accordance with the rules of arbitration of ___ by one or more arbitrators appointed in accordance with the said rules.

Art. 14. Headings

The headings within this agreement are used for convenience only and shall not affect its interpretation.

Art. 15. Notices

All notices called for under this Agreement must be in writing and will be deemed given when mailed, certified mail, return receipt requested, to a party at its address written above or at such other address as a party may hereafter designate in writing to the other party.

Art. 16. Entire agreement

This Agreement forms the entire understanding between the parties. It cancels and supersedes all prior agreements and understandings. There shall be no change or modification of any of the terms in this Agreement unless it is reduced to writing and signed by both parties.

DISTRIBUTORSHIP AGREEMENT

THIS AGREEMENT, dated ___ of 2006 is between:

Parties

_____, (hereinafter "THE PRINCIPAL") a company duly incorporated under the laws of El Salvador, and represented by _____, with registered main offices at: _____, fax number: _____ and _____, (hereinafter "THE DISTRIBUTOR") a company duly incorporated under the laws of Florida, United States of America, and represented by _____, with registered main offices at _____, fax number: _____.

- **Recitals**

The principal wishes to commission the DISTRIBUTOR for the distribution of its products describe in the Schedule A, and the DISTRIBUTOR has agreed to conduct such distribution in accordance with the provisions of this agreement.

- **Definitions**

In this agreement, the following word shall have the following meanings:

Bonus: compensation paid by the PRINCIPAL to the DISTRIBUTOR based on the volume of products sold by the DISTRIBUTOR.

Commencement date: the date this agreement will be executed as valid for both parties

Net sales value: the invoiced price of Products sold by the DISTRIBUTOR inclusive of any deduction made.

Parties: The PRINCIPAL and the DISTRIBUTOR.

Products: the products describe as in the Schedule A

Territory: the territory assigned to the DISTRIBUTOR for the execution of the distribution

- **Commencement Date**

Both the PRINCIPAL and the DISTRIBUTOR agree that this document shall come into effect on the commencement date, and will be valid for a period of one (1) year, from _____, 2006 to _____, 2007. This agreement cannot be shortened without the express written consent of both parties. In such case, communication shall be made 90 days prior to the early termination date.

- **Territory**

The Territory assigned for the execution of the non exclusive distribution activity of the products will be the State of Florida, United States of America.

- **Nature of relationship**

The DISTRIBUTOR will serve as an independent contractor and be responsible to pay all applicable social security, withholding and other employment taxes. The DISTRIBUTOR will bear all expenses incurred in its sales endeavors except those, which the PRINCIPAL agrees to pay for in writing.

- **Activities and minimum orders**

The DISTRIBUTOR will diligently promote and sale the PRINCIPAL products and act as the PRINCIPAL'S mayor representative to its accounts in the State of Florida, and will make no representations, warranties or commitments binding the PRINCIPAL without the PRINCIPAL'S prior written consent.

Additionally, the DISTRIBUTOR will order the products as specified in the Schedule A at least four (4) times during the year of the term of this contract. The order should be equal to four (4) containers of the capacity of _____ per year, orders that will count for the amount no less than US\$_____ per year.

- **Prices**

The prices for the products delivered from the PRINCIPAL to the DISTRIBUTOR will be calculated with incoterm FOB in accordance with the amounts ordered. The PRINCIPAL will have the option to suggest the final retail price to the DISTRIBUTOR. Nevertheless, it will be the sole liability of the DISTRIBUTOR to decide whether or not to use such suggested retail prices.

- **Payments**

The DISTRIBUTOR agrees the following method of payment for the shipments of the products: the payment will be awarded in advance prior to send the products to the State of Florida, and it will be the sole liability of the DISTRIBUTOR the above said payment. Any additional fees in collecting the payment will be charged to the DISTRIBUTOR.

- **Bonus**

The PRINCIPAL shall recognize to the DISTRIBUTOR a bonus of US\$ __ if the DISTRIBUTOR meets the volume of annual orders in no less than eight (8) months from the commencement date of this agreement and the final balance of the yearly sales count over US\$ __ within the territory assigned to the DISTRIBUTOR. Both conditions have to occur in order to obtain the bonus herein. No orders received from other sources will count for the grant of the bonus to the DISTRIBUTOR.

- **Promotional materials**

The PRINCIPAL shall provide the DISTRIBUTOR without additional charge the necessary supplies, promotional materials, reprints of advertisements, and such other items as the PRINCIPAL may deem advisable for promotion of its business and will make available to the DISTRIBUTOR those pamphlets, advertising, promotional and sales materials free of charge and in reasonable quantities. These materials will be provide under the financial plan of the PRINCIPAL and due the sole criteria of the PRINCIPAL, and no claim will be made by the DISTRIBUTOR on this point under any circumstances.

- **Records**

The DISTRIBUTOR shall keep at its normal place of business detailed and up to date records and accounts showing the quantity, description and value of the products of the PRINCIPAL sold in the assigned territory. The PRINCIPAL has the right to request the above said records in order to keep surveillance of the performance of the DISTRIBUTOR.

- **Termination**

The PRINCIPAL shall keep the right to terminate this agreement, without any liability, at any time on 90 days notice in writing to the DISTRIBUTOR, if the following occurs:

- a) Poor performance of the DISTRIBUTOR in its duties to obtain orders and placements of the PRINCIPAL's products.

- b) Wrongful use of the Principal's products, trademarks, and commercial names.
- c) If the DISTRIBUTOR becomes insolvent, or if an order is made or a resolution is passed against the DISTRIBUTOR regarding its creditors or suffers any similar or analogous action in consequence of debt.
- d) If the DISTRIBUTOR do not provide sufficient information as requested by the PRINCIPAL herein.

- **Force Majeure**

No termination fee will be paid neither by the PRINCIPAL or the DISTRIBUTOR, and neither party shall have any liability if the agreement is forced into cancellation due to circumstances beyond the reasonable control of that party. The party affected by such circumstances shall promptly notify the other party.

- **Confidentiality**

Each party shall maintain in confidentiality any information provided to it directly or indirectly by the other party, including trade secrets. Additionally, during the term of this Agreement and for a period of one (1) year thereafter, neither party will hire or otherwise utilize the services of any employee nor sales associate of the other party. Both parties agree that the loss of such employee or sales representative would result in irreparable harm and grants to the other the right to seek damages and injunction in a court of equity or other competent jurisdiction to enforce its rights hereunder.

- **Rights on Trademarks**

The use of trademarks, logos and other distinctive ways are the exclusive property right of the PRINCIPAL. Neither the DISTRIBUTOR or its subsidiaries or representatives will pursue any registration procedures of the trademarks, logos and distinctive ways as said before. The DISTRIBUTOR herein agrees to preserve the good name and make good use of the trademarks protected under this agreement and shall not seek any right or indemnity for the use or ownership of those trademarks.

- **Law and Jurisdiction**

The validity, construction and performance of this Agreement shall be governed by ___ law and shall be subject to the exclusive jurisdiction of the ___ courts, to which the parties hereby submit, except that a Party may seek an arbitration procedure in accordance with the rules of the ___ arbitration court.

- **Invalid clauses**

If any term or provision of the Agreement shall to any extent be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

- **Waiver**

Any failure by either party to enforce this Agreement at any time or to exercise any option provided for herein will not constitute a waiver of any provisions of this Agreement.

- **Headings**

The headings within this agreement are used for convenience only and shall not affect its interpretation.

- **Notices**

All notices called for under this Agreement must be in writing and will be deemed given when mailed, certified mail, return receipt requested, to a party at its address written above or at such other address as a party may hereafter designate in writing to the other party.

- **Entire agreement**

This Agreement forms the entire understanding between the parties. It cancels and supersedes all prior agreements and understandings. There shall be no change or modification of any of the terms in this Agreement unless it is reduced to writing and signed by both parties.

("PRINCIPAL")

(DISTRIBUTOR)

By: _____

By: _____

Dated: _____

Dated: _____



BROKERAGE AGREEMENT

THIS AGREEMENT, dated ___ of 2006 is between:

Parties

_____, (hereinafter "THE PRINCIPAL") a company duly incorporated under the laws of El Salvador, and represented by _____, with registered main offices at: _____, _____, fax number: _____ and _____, (hereinafter "THE BROKER") a company duly incorporated under the laws of Florida, United States of America, and represented by _____, with registered main offices at _____, fax number: _____.

- **Recitals**

The principal wishes to commission the BROKER to promote the sale of the PRINCIPAL'S products and act as the PRINCIPAL'S mayor representative to its accounts in the assigned territory herein and will make no representations, warranties or commitments binding the PRINCIPAL without the PRINCIPAL'S prior written consent, in accordance with the provisions of this agreement.

- **Definitions**

In this agreement, the following word shall have the following meanings:

- **Commissions:** compensation paid by the PRINCIPAL to the BROKER based on the volume of products sold by the Broker in the assigned territory.
- **Commencement date:** the date this agreement will be executed as valid for both parties
- **Net sales value:** the invoiced price of Products sold by the PRINCIPAL inclusive of any deduction made and to be taken into account for the calculation of the commission.



- **Parties:** The PRINCIPAL and the BROKER.
 - **Products:** the products describe as in the Schedule A (if applicable).
 - **Territory:** the territory assigned to the BROKER for the execution of its commission.
- **Commencement Date**
Both the PRINCIPAL and the BROKER agree that this document shall come into effect on the commencement date, and will be valid for a period of one (1) year, from _____, 2006 to _____, 2007. This agreement cannot be shortened without the express written consent of both parties. In such case, communication shall be made 90 days prior to the early termination date.
 - **Territory**
Territory assigned for the execution of the non exclusive distribution activity of the products will be the State of Florida, United States of America.
 - **Nature of relationship**
The BROKER will serve as an independent contractor and be responsible to pay all applicable social security, withholding and other employment taxes.
 - **Commission**
The PRINCIPAL agrees to pay the BROKER, as compensation for its services, a commission of 5% on the net invoice amount of sales shipped to the Broker's contacts and clients served to the PRINCIPAL under this agreement. The commission rate specified in this paragraph cannot be changed unless mutually agreed upon in writing. The PRINCIPAL shall not deduct ad costs or other promotional fees from net invoice amounts.
 - **Origin of the Commission**
The BROKER shall receive its commission on all shipments sent it to the contacts and clients made in accordance to this agreement. Commissions shall be paid on all orders originating from customers contacted under the Broker's assistance, and under any circumstances the Broker will be allowed to receive commissions from the PRINCIPAL for those orders of costumers who directly contact the PRINCIPAL, without the Broker's assistance to receive the above said orders.

- **Promotional materials**

The PRINCIPAL shall provide the BROKER without charge the necessary supplies, promotional materials, reprints of advertisements, and such other items as the PRINCIPAL may deem advisable for promotion of its business and will make available to the BROKER those pamphlets, advertising, and promotional materials free of charge and in reasonable quantities. These material will be provide under the financial plan of the PRINCIPAL and due the sole criteria of the PRINCIPAL, and no claim will be made by the BROKER on this point under any circumstances. There will be a fixed amount equivalent to one percent (1%) of the net sales provided by the PRINCIPAL for this purpose.

- **Prices of Products**

The PRINCIPAL will provide a list of prices to be proposed by the BROKER to the prospective buyers in the BROKER'S market, and will have full right to set and change prices for products. The PRINCIPAL will also have the right to add and delete products. Sales price will be charge under the incoterm FOB.

- **Orders**

The BROKER agrees to fulfill under its performance, orders equal to the amount of _____ per year into the BROKER'S market. The PRINCIPAL will keep a surveillance to the performance of the BROKER in this specific matter.

- **Records and Reports**

The PRINCIPAL shall keep at its normal place of business detailed and up to date records and accounts showing the quantity, description and value of the products sold to the contacts and clients as agreed herein, and being sufficient to ascertain the commissions due under this agreement, upon request from the BROKER and under the sole discretion of the PRINCIPAL. The PRINCIPAL will request information and records of the contacts and clients made by the BROKER in the same basis as said above.

- **Balance at termination**

At the termination of this Agreement, a final accounting shall be made between the parties. The PRINCIPAL shall maintain an accurate set of books and records regarding commissions due the BROKER following the termination of this Agreement and the BROKER shall be paid full commission on all accepted orders in-house at the date of termination which are shipped after the termination date.

- **Termination**

The PRINCIPAL shall keep the right to terminate this agreement, without any liability, at any time on 90 days notice in writing to the BROKER, if the following occurs:

- a) Poor performance of the BROKER in its duties to obtain orders and placements of the PRINCIPAL'S products.
- b) Wrongful use of the PRINCIPAL'S products, trademarks, and commercial names.
- c) If the BROKER becomes insolvent, or if an order is made or a resolution is passed against the BROKER regarding its creditors or suffers any similar or analogous action in consequence of debt.
- d) If the BROKER do not provide sufficient information as requested by the PRINCIPAL herein.

- **Force Majeure**

No termination fee will be paid neither by the PRINCIPAL or the BROKER, and neither party shall have any liability if the agreement is forced into cancellation due to circumstances beyond the reasonable control of that party. The party affected by such circumstances shall promptly notify the other party.

- **Confidentiality**

Each party shall maintain in confidentiality any information provided to it directly or indirectly by the other party, including trade secrets. Additionally, during the term of this Agreement and for a period of one (1) year thereafter, neither party will hire or otherwise utilize the services of any employee nor sales associate of the other party. Both parties agree that the loss of such employee or sales representative would result in irreparable harm and grants to the other the right to seek damages and injunction in a court of equity or other competent jurisdiction to enforce its rights hereunder.

- **Rights on Trademarks**

The use of trademarks, logos and other distinctive ways are the exclusive property right of the PRINCIPAL. Neither the BROKER or its subsidiaries or representatives will pursue any registration procedures of the trademarks, logos and distinctive ways as said before. The BROKER herein agrees to preserve the good name and make good use of the trademarks protected under this agreement and shall not seek any right or indemnity for the use or ownership of those trademarks.

- Law and Jurisdiction**
 The validity, construction and performance of this Agreement shall be governed by ____law and shall be subject to the exclusive jurisdiction of the ___ courts, to which the parties hereby submit, except that a Party may seek an arbitration procedure in accordance with the rules of the ___ arbitration court.
- Invalid clauses**
 If any term or provision of the Agreement shall to any extent be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- Waiver**
 Any failure by either party to enforce this Agreement at any time or to exercise any option provided for herein will not constitute a waiver of any provisions of this Agreement.
- No agency**
 Neither party shall act or describe itself as the Representative Agent of the other, nor shall it make or represent that it has authority to make any commitments on the other’s behalf.
- Headings**
 The headings within this agreement are used for convenience only and shall not affect its interpretation.
- Notices**
 All notices called for under this Agreement must be in writing and will be deemed given when mailed, certified mail, return receipt requested, to a party at its address written above or at such other address as a party may hereafter designate in writing to the other party.
- Entire agreement**
 This Agreement forms the entire understanding between the parties. It cancels and supersedes all prior agreements and understandings. There shall be no change or modification of any of the terms in this Agreement unless it is reduced to writing and signed by both parties.

("PRINCIPAL")

(DISTRIBUTOR)

By: _____

By: _____

Dated: _____

Dated: _____

TRADEMARK LICENSE AGREEMENT

Trademark Owner (Licensor)

_____ Corp., a corporation duly organized and existing under the laws of _____, having offices at _____

Trademark User (Licensee)

_____ Corp., a corporation duly organized and existing under the laws of _____, having offices at _____

Licensed Trademarks; as per attached List of Trademarks identified as Schedule A

WHEREIN an exclusive license for the use of the Licensed Trademarks in the Territory identified herein and under the terms and conditions set forth below:

Scope of Exclusive License:

- a) **Term:** from____, to the expiry date of the trademark registration (including subsequent renewals by licensor)
- b) **Territory:**
- c) **Goods:**
- d) **Control:** The Licensed Trademarks shall be used and the Good shall be produced, supplied, advertised and promoted in accordance with the specifications established by licensor from time to time. Licensee shall permit reasonable access of the duly authorized representatives of licensor to the premises where the Goods are produced and located.
- e) **LICENSOR** will be the only owner of the Intellectual Property rights of the trademarks of the licensed trademarks hereto.

- f) **LICENSEE** will recognized a royalty equivalent to the amount of US\$ _____ per each good produced and deliver into the market of the assigned territory.

The parties hereto request the recordal of this License at the Trademark Office in the Territory.

Dated this ____ day of ____ of 2006.

("PRINCIPAL")

(DISTRIBUTOR)

By: _____

By: _____

Dated: _____

Dated: _____