

BULLETIN

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DISTRIBUTION AGREEMENTS: LEGAL FRAMEWORK, RISKS, AND PRACTICAL GUIDE



Distribution relationships are one of the key building blocks of both local and international trade. However, these relationships also bring along various risks that affect the rights and obligations of the parties and may often lead to serious financial consequences. In practice, especially in cases where no written agreement exists, many problems arise that may undermine trust between the parties, disrupt the commercial relationship, and lead to lengthy legal proceedings.

EXCLUSIVITY BREACH: One of the most common issues is the breach of exclusivity; this occurs when one of the parties makes unauthorized sales outside the region or customer group specified in the agreement.

TRADEMARK INFRINGEMENTS: Trademark infringements arise from unauthorized rebranding of products or improper use of trademark elements or the brand itself, directly damaging brand value.

FAILURE TO MEET SALES TARGETS: This may result in the supplier's inability to achieve the expected commercial performance and may lead to termination of the contract.

PAYMENT DELAYS: These disrupt cash flow and undermine trust between the parties.

VIOLATION OF QUALITY STANDARDS: This negatively impacts the brand's image and may cause a loss of market share.

UNAUTHORIZED SUB-DISTRIBUTORSHIP: Occurs when authority is granted to other firms in breach of the contract, weakening control mechanisms.

UNFAIR TERMINATION: Unfair termination, i.e., ending the contract without just cause, may give rise to significant compensation liabilities.

UNFAIR COMPETITION: Arises when the distributor markets competing products, thereby breaching the duty of loyalty.

FAILURE IN STOCK MANAGEMENT: Leads to unmet market demands and customer dissatisfaction.

These issues each threaten the sustainability of the distribution relationship and create long-term negative effects on the parties' commercial reputation. Therefore, it is of vital importance—both legally and commercially—that the parties foresee these risks in advance and carefully draft their contracts.

2. The Importance of Distribution Agreements and Key Provisions to be Included

A distribution agreement clarifies the rights and obligations of the parties, prevents potential disputes, and provides legal protection. In the decisions of the Court of Cassation (Yargıtay), it has been observed that relationships carried out without a written contract often cause serious harm to one of the parties due to problems of proof and interpretation. Research shows that in cases where no written contract is concluded, the rate of disputes between the parties may rise as high as 40%.

When no distribution agreement is executed, the parties' duties and responsibilities remain unclear, leading to uncertainties in rights and obligations, which in turn cause interpretational differences and evidentiary difficulties. The absence of agreed provisions on pricing, payment, and delivery terms results in financial losses, while the lack of termination clauses gives rise to unfair claims. Failure to protect trademarks and trade secrets leads to intellectual property infringements; unclear boundaries cause competition issues and regional conflicts. Uncertainty in delivery terms creates logistical disruptions, while failure to regulate after-sales services undermines customer satisfaction. Finally, the absence of a written agreement adversely affects long-term investment and marketing plans.

Key Clauses in Distribution Agreements;

1. Subject of the Agreement and Definitions:

Definitions of the brand, product, territory, and customers must be clear, and the purpose of the agreement—specifying in which region and under what conditions the products will be sold—should be explicitly stated.

2. Legal Status of the Parties:

2.1 It must be expressly stated that the distributor is an independent trader and not an agent, representative, or partner.

3. Territory and Authority:

3.1 The geographical limits of the distributor's activities must be clearly defined.

3.2 If exclusivity applies, it should be specified; if not, the company's right to appoint other distributors must be expressly reserved.

4. Orders – Sales – Stock:

4.1 The method of placing orders should be specified (standard form, e-mail, or via system).

4.2 Minimum purchase obligations and annual/monthly sales targets should be included in the agreement.

4.3 Stock maintenance, storage, and delivery requirements are among the matters that should be regulated in the agreement.

5. Pricing and Payment:

The agreement must specify who has the authority to determine product prices, payment terms, default interest, conditions for acceptance of checks/notes, collection bonuses, discounts, participation in campaigns, etc.

6. Promotion and Advertising:

The limits of the distributor's authority in promoting the brand should be regulated, making it clear that no advertising/promotion may be carried out without the Company's prior approval.

7. Non-Competition and Confidentiality:

The agreement should specify whether the distributor may sell competing products, the obligation to protect the company's trade secrets, and the rules for sub-dealers.

8. Insurance and Security:

The agreement must clearly state the requirement for a bank letter of guarantee, the obligation to insure the goods, and who bears the risk.

9. Audit and Reporting:

The company must have the right to audit the distributor's warehouses and records, and the distributor must be obliged to provide regular sales, stock, and customer reports.

10. Term and Termination of the Agreement:

10.1 Whether the agreement is fixed-term or indefinite, and conditions for automatic renewal, should be stated.

10.2 Grounds for immediate termination for cause should be included (e.g., bankruptcy, non-payment of debts, breach of non-compete obligations).



3. Intellectual Property Provisions in Distribution Agreements

1. Use of Trademarks and Logos

- 1.1 The distributor may use the company's trademark, logo, and packaging only within the scope of the agreement and with the company's prior written consent.
- 1.2 The distributor may not register the trademark in its own name or on behalf of third parties, nor may it use it in an altered form.
- 1.3 Any use that may damage the company's trademark or commercial reputation is strictly prohibited.

2. Copyrights and Promotional Materials

- 2.1 All materials such as brochures, catalogs, advertising visuals, software, and promotional videos are the intellectual property of the company.
- 2.2 The distributor may not reproduce or modify them and may only use them in the manner authorized by the company.

3. Patent and Design Rights

- 3.1 The packaging, design, and patented technologies of the products are the exclusive property of the company.
- 3.2 The distributor may not imitate, have imitated, or produce similar products.

4. Trade Secrets and Know-How

- 4.1 The company's distribution system, customer data, and pricing strategies constitute trade secrets. Trade secrets include documents and information such as the company's distribution system, customer details, and pricing strategies.
- 4.2 The distributor may not disclose such information to third parties and may use it only within the scope of the agreement.
- 4.3 This obligation shall survive the termination of the agreement and continue indefinitely.

4. Examples of Common Grounds for Termination in Practice

- » Failure to achieve sales targets over consecutive periods.
- » Persistent and repeated payment delays.
- » Marketing of competing products within the same territory.
- » Damaging the brand's reputation through low-quality campaigns.
- » Unauthorized appointment of sub-distributors or delegation of authority.



5. Measures for Ensuring a Healthy Distribution Relationship

1. **Performans Takibi: Performance Monitoring:** Tracking sales performance through regular reporting and target monitoring systems.
2. **Timely Payments:** Preventing delays through standing payment orders and financial planning.
3. **Contract Training:** Providing periodic training to distributor employees on the provisions of the agreement.
4. **Regular Communication:** Establishing open communication channels between the parties and holding regular meetings.
5. **Warning Mechanism:** Sending written notices upon detection of breaches and keeping records thereof.
6. **Interim Solutions:** Employing mediation or negotiation methods before problems escalate.

6 . Domestic and International Distribution Agreements

Domestic distribution agreements are primarily governed by the provisions of the Turkish Code of Obligations and the Turkish Commercial Code. In such agreements, the scope of authority of the parties, product range, sales targets, payment schedules, delivery terms, and warranty obligations must be clearly defined. In the Turkish market, regional distribution networks, logistical capacities, competitive intensity, and consumer behavior are crucial factors that should be taken into account when drafting the contract.

International distribution agreements involve complex commercial relationships where different national legislations, trade customs, and cultural differences must be considered together. Therefore, during the drafting process, not only commercial expectations but also private international law rules, customs and tax legislation, import-export regulations, foreign exchange fluctuations, logistical costs, and political risks must be taken into account.



7. Frequently Asked Questions (FAQ)

What is the difference between distributorship and agency?

The distributor purchases and resells the products in its own name and for its own account, whereas an agent acts on behalf of the manufacturer or supplier. This distinction directly affects legal liability and risk allocation within the framework of the provisions of the Turkish Commercial Code and the mandate rules of the Code of Obligations.

Is a distribution agreement required to be in writing?

Although there is no statutory requirement for a written form, entering into a written agreement is critically important for purposes of proof and evidentiary convenience. Pursuant to the Code of Civil Procedure (HMK), reference should be made to the provisions of the Turkish Commercial Code (Law No. 6102) and the Turkish Code of Obligations (Law No. 6098).

Can the distributor be the sole and exclusive distributor?

An exclusivity clause may be included, but under Law No. 4054 on the Protection of Competition, market foreclosure or abuse of dominance is prohibited. Decisions of the Competition Authority provide guidance on this matter.

Can the agreement be terminated before its expiry?

If there is just cause (such as a material breach of contract, default in payment, or trademark infringement), termination is possible. Otherwise, in cases of unjust termination, compensation liability will arise.

Can the distributor set its own prices?

In vertical agreements, resale price maintenance is prohibited under competition law. However, the use of recommended price lists is permissible.

What are the legal consequences of failing to meet sales targets?

If performance obligations are explicitly regulated in the agreement, failure to meet them may constitute just cause for termination.

Can the distributor sell the products under its own brand?

Sales without the trademark owner's authorization are prohibited. Such actions constitute both trademark infringement and unfair competition.

Which law applies in international distribution agreements?

A choice of law clause must be included; otherwise, under Law No. 5718 on Private International Law (MÖHUK), the applicable law is determined based on connecting factors.

How are payment disputes between the parties resolved?

First, the contractual dispute resolution mechanism (arbitration or mediation) shall be followed; otherwise, general courts have jurisdiction.

What happens to the remaining stock upon termination of the agreement?

The agreement must clearly regulate whether the remaining stock will be returned, destroyed, or sold at a discount. Otherwise, this may result in significant loss of value and disputes.

8. Conclusion and General Assessment

Distribution relationships play a major role in both local and international markets as one of the most significant forms of collaboration in modern commerce. However, when not properly structured and supported with adequate legal foundations, this model of cooperation entails serious legal, commercial, and financial risks for the parties. Therefore, distribution agreements should not merely be considered as commercial arrangements, but as comprehensive legal safeguards protecting the rights and interests of the parties.

In this booklet, we have examined in detail the common issues encountered in practice, the importance of distribution agreements, termination processes, considerations in domestic and international contracts, methodological and strategic recommendations, dispute resolution mechanisms, and risk management. Each topic has been prepared with both legal and practical commercial perspectives, drawing inspiration from real business cases and judicial decisions.

The key elements of success in distributorship include transparent communication between the parties, regular performance monitoring, realistic determination of commercial targets, protection of competition and intellectual property, efficient logistical planning, and legal consultancy support. Particularly in long-term and international collaborations, it is of vital importance to regularly review agreements and adapt them to changing market conditions.

From a legal perspective, a distribution agreement eliminates uncertainties by defining the rights and obligations of the parties, establishes clear procedures for dispute resolution, and renders risks manageable. From a commercial standpoint, it ensures a regular and predictable workflow, thereby strengthening the brand's market position.

In conclusion, the combined implementation of legal and commercial discipline in distribution relationships constitutes the most reliable path toward building a sustainable business model. The aim of this guide is to provide all parties involved in distribution processes with comprehensive, applicable, and strategic information to prevent potential mistakes and to make collaborations more efficient, profitable, and long-lasting.

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