

## 8 Key Contractual Issues

### Your distribution agreement will need to cover:

**The area where the agreement applies (N.B. local competition law may apply here. Take advice to avoid problems).**

In appointing a partner, you are seeking to maximise your sales. Therefore, think carefully about the territory you are giving to a distributor. It is tempting to appoint a single partner in, say, Germany, on the basis that they claim to cover the whole market. Check out their sales profile across the territory. If in doubt offer a trial period in which they can prove their ability. This applies especially to where partners are keen to have the rights for a neighbouring territory. Remember, it is **your** market.

**Whether the relationship is to be based on exclusivity (i.e. only the partner has rights for the territory), non-exclusivity (i.e. no exclusive rights apply) or sole distribution (you retain the right to sell direct).**

Some products require huge penetration and are very market attractive and thrive best in a competitive multi-distributor environment. Many work better through one committed, effective partner in a territory. Potential partners will often ask for exclusivity. If this is the route you want to go, conventional wisdom is only to offer this after a successful trial period.

**Whether there are sectoral restrictions.**

For example you may want to appoint another specialist to take your product into a particular sector. Or you may want to retain certain house accounts yourself.

The following modules offer a deeper insight into this topic:

**Key Contractual issues**

**Legal Considerations**

You can find them either in the SavvyAcademy or in the 'Find and Manage Partners' area of 'Create Your Plan'.

Information you complete as part of the Module will be automatically entered into your Plan. The more modules you complete, the more your Plan will build.

## **Intellectual property rights**

It may be appropriate to clarify where rights are vested in the product, especially where a partner may be involved in product adaptation or development specifically for the market.

Consider also any need for agreement over use of Trade Marks, copyright material etc.

## **Prices, minimum order quantities, and credit terms**

Remember, you need to achieve win/win here. There is no point in creating an agreement which fails to motivate your partner.

## **Volume bonus or discount arrangements**

Again, keeping the right partner motivated will be the key to success.

## **Demonstration equipment**

Is your partner obliged to purchase demonstration equipment? If equipment is passed over under some other arrangement this needs to be detailed, including care and maintenance responsibilities.

## **The duration of the agreement and the terms for termination**

- Your agreement should state if it is automatically renewed or whether terms will need to be re-negotiated.
- You should also append your agreed targets for the first twelve months.
- You may wish to record agreement over reporting frequency and content.
- You may wish to include non-disclosure clauses.