

## Sales in Ukraine on behalf of seller

### 1. Introduction

### 2. Representation based on a commission agreement

#### Consequences of withdrawal from the commission agreement

### 3. Commercial intermediation (agency activity)

#### Features of the agency agreement execution

#### Agency fee

#### Responsibilities of the parties

B

Developing sales structures abroad always involves additional costs, for this reason, some national and international legal requirements, as well as the specifics of the scope of activities and products / services should be taken into account when developing an optimal sales structure.

In case of direct sales, the manufacturer sells its product directly to the final consumer regardless of whether its customers are businesses or individuals. In case of indirect sales, cooperation with representatives and intermediaries is used. This article describes the most important agreements with trade intermediaries who sell products or services on behalf and at the expense of the principal or seller.

#### Representation based on a commission agreement

The representative undertakes to perform certain legal actions on behalf and at the expense of the principal. The actions taken by the representative create, change and terminate the principal's civil rights and obligations. The principal is obliged to issue a power of attorney to the representative to perform the legal actions provided for in the commission agreement.

The subject of the commission agreement: legally significant actions (transactions) that must be legitimate, clear, and feasible, on the one hand, and chargeable (unless otherwise agreed between the parties) on the other hand. By mutual consent of the parties, the agreement may provide for the exclusive right of the representative to represent the interests of the principal, as well as the term of such commission agreement and the territory where the exclusive right is valid.

The representative may deviate from the content of the commission agreement if the interests of the principal so require (if the representative was not able to request the principal in advance or did not receive a response to their request within a reasonable term).

The law provides for the right to withdraw from the commission agreement. The principal or representative has the right to do it at any time. In this case, the party who withdraws from the agreement is obliged to immediately notify the other

party (as well as interested third parties – in case of the principal's withdrawal from the agreement). It should be borne in mind that the waiver of the right to withdraw from the agreement is void.

The representative has no right to refuse to perform the actions specified in the commission agreement if these actions are urgent for or aimed at preventing losses to the person whose interests they represent, or other persons. If the representative acts as an entrepreneur, the party withdrawing from the agreement must notify of that the other party no later than one month before its termination unless a longer period is set by the agreement.

### **Consequences of withdrawal from the commission agreement**

The withdrawal of the principal or the representative from the commission agreement is not the reason for compensation of losses incurred as a result of the agreement termination, except for termination of the agreement whereby the representative acted as a commercial representative.

The representative's withdrawal from the commission agreement is also a reason for compensation of losses:

- if the representative withdraws from the agreement under such conditions when the principal is deprived of the opportunity to otherwise secure their interests,
- if the principal has not been immediately notified of the commission agreement termination and the situation requires urgent actions or actions aimed at preventing losses to the principal or other persons.

If the agreement is terminated before full execution of the representative's obligations, the principal must compensate the representative's costs associated with the execution of the commission agreement, and also pay a fee in proportion to the work done if the representative is entitled to a fee. This provision does not apply to execution of the commission agreement by the representative after the latter learned or could learn about its termination.

### **Commercial intermediation (agency activity)**

Commercial intermediation (agency activity) is a business activity associated with the services provided by a commercial agent to business entities in carrying out their economic activities through intermediation on behalf, under the control, and at the expense of the entity they represent.

The subject: services for concluding transactions or facilitating the conclusion of transactions, on the one hand; for the agency fee determined by the parties to the agreement, on the other hand.

The law provides two grounds for the emergence of agency relations:

- granting of the authority to a commercial agent by the business entity to take appropriate action based on a written agreement,
- approval by an entity represented by the commercial agent of an agreement concluded by the agent in the interests of that entity without the proper authority or in excess of the authority granted to the agent (the transaction is

deemed to be approved if the entity represented by the commercial agent does not reject the actions of the commercial agent before a third party).

### **Features of the agency agreement execution**

If the agreement does not specify the territory of the commercial agent, it is considered that the agent operates within the territory of Ukraine. An entity represented by a commercial agent has the right to entrust commercial intermediation to others (by notifying the commercial agent).

The commercial agent also has the right to provide commercial intermediation to other entities, if the interests of these entities are not in conflict. It should be noted that the commercial agent is not entitled to carry out commercial intermediation for other entities within the limits provided by the agency agreement in case of a monopoly agency relationship.

In the event of revocation of the commercial agent's powers, the business entity represented by the commercial agent must notify them of the agreement termination at least one month in advance, unless a longer term is provided in the agreement.

### **Agency fee**

The agent's fee is paid to the commercial agent in the amounts and on the terms set by the agreement after a third party's payment under an agreement concluded by the agent unless otherwise provided by the agreement.

An additional fee may be provided if the commercial agent undertakes to guarantee the performance of the agreement. It should be noted that a commercial agent has the right to request an accounting statement for all transactions for which they are entitled to agency fees.

### **Responsibilities of the parties**

The commercial agent and the entity represented by the commercial agent shall be liable for damages caused to the other party as a result of non-performance or improper performance of their obligations (unless otherwise – only in case of a commercial agent – provided in the agency agreement).

Unless otherwise provided in the agency agreement, the commercial agent does not guarantee to the business entity they represent the fulfillment of obligations by third parties under agreements concluded by them. In case of breach of the agency agreement by the business entity represented by the commercial agent, the agent is entitled to receive the fee in the amounts provided in the agency agreement.

The commercial agent is liable for disclosure of confidential information under the law and the agreement.

It should be noted that certain types of intermediary activities require a special permit or license – for example, for intermediary activities in the issuance and circulation of securities.