

Indirect sales on behalf of Ukrainian trading partner

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Cooperation with Ukrainian intermediaries is widely used in the realm of international trade. This is because Ukrainian trading partners are aware of the needs and trends of their market and understand them, so they can successfully conduct business operations.

This article highlights the most important agreements between foreign sellers and Ukrainian trade intermediaries, based on which products and services are sold on behalf of a Ukrainian partner.

Sales at the expense of Ukrainian importer

Distribution agreements

Even though the terms "distribution" and "distributor" are used in Ukrainian law in some cases (for example, concerning vehicles' trade and their spare parts, as well as medicines), distribution agreements generally remain without special legal regulation. However, they are often concluded in the realm of foreign trade based on the principle of agreements' freedom.

A distribution agreement is an agreement where one party (a foreign supplier) undertakes to continuously supply products to the other party (a Ukrainian distributor), and a Ukrainian distributor undertakes to repurchase these products for resale on its own behalf and to its own advantage.

Special features of distribution agreements

Not only the manufacturer but also the exporter or seller can act as a supplier. The distributor buys the goods for resale within the agreed territory.

It should be borne in mind that any reservations in the business agreement that set liability exceptions or limitations of the products' manufacturer (seller) are inadmissible. The manufacturer's economic and legal liability for substandard products is established by law and applies regardless of the reservation's presence in the relevant agreement.

Sales at the expense of a foreign seller

3.1. Commission agreements

In case of commission agreements, it is about making one or more transactions on one's own behalf, but at the expense of the principal (foreign seller) and on a paid basis. The principal may be prohibited from concluding commission agreements with other partners.

Deviation from the instructions of the principal

The commission agent (Ukrainian business partner) has the right to deviate from the instructions of the principal if the interests of the principal (foreign seller) so require, and the commission agent was not able to ask the principal in advance or did not receive a response to a request within a reasonable time. In this case, the commission agent must notify the principal of any deviations from their instructions as soon as possible.

The Ukrainian business partner can have the right to deviate from the principal's instructions without prior request, but with mandatory

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principal's notification of the deviations.

The Ukrainian trading partner who sold the property at a lower price must pay the difference to the principal at its own expense. It is released from this obligation only if it proves that it was not able to sell the property at the agreed price and that its sale at a lower price prevented greater losses.

If the commission agent has purchased the property at a higher price than agreed, the principal has the right not to accept it, notifying the commission agent within a reasonable time after receiving notification of this purchase.

If the Ukrainian trading partner has made the transaction on more favorable terms than agreed, the additional benefit received belongs to the foreign seller.

Commission fee

If the commission agreement was not performed for reasons dependent on the principal, the commission agent is entitled to a commission fee on general grounds. The agreement may provide for an additional fee if the commission agent has vouched for the transaction.

In case of termination or unilateral withdrawal from the commission agreement, the Ukrainian trading partner has the right to be paid for the actually performed actions. It has the right to deduct the amounts due to it under the agreement from all funds it received for the foreign seller (only if other creditors of the foreign seller do not have a preemptive right to satisfy their claims from the funds belonging to the foreign seller).

Note that the commission agent has the right to detain the property to be transferred to the principal to secure its claims under the commission agreement.

The right to withdraw from the commission agreement

The foreign seller has the right to withdraw from the commission agreement. If the commission agreement is concluded without specifying a term, the foreign seller must notify the Ukrainian business partner of the withdrawal from the agreement at least 30 days in advance. In this case, the Ukrainian business partner is entitled to reimbursement of expenses it incurred due to the performance of the agreement.

The Ukrainian commission agent has the right to withdraw from the commission agreement only when the term is not specified by the agreement. They must notify the foreign seller of the withdrawal from the agreement no later than 30 days in advance.

In case of the commission agent's withdrawal from the commission agreement, the principal must dispose of their property held by the commission agent. The principal's withdrawal from the commission agreement must be performed within the term specified in the agreement or immediately (if such term is not specified). The term for the Ukrainian commission agent's withdrawal is 15 days from the date of receipt of the withdrawal notice. If the principal fails to fulfill this obligation, the Ukrainian commission agent has the right to transfer the said property for safekeeping at the expense of the principal or to sell this property at the most favorable price for the principal.

3.2. Consignment agreements

Consignment agreements in the realm of foreign trade are an effective means of expanding markets if there is a need for warehouses in Ukraine. There is no regulation of consignment agreements in the civil and commercial legislation of Ukraine; the currency and tax legislation contains only the definition of a consignment transaction.

These are transactions for the sale of goods, where one party (consignee, Ukrainian trading partner) undertakes on behalf of the other party (consignor, foreign seller) to sell goods belonging to the consignor (foreign seller) from the consignment warehouse on its behalf within a certain time and for a specified fee.

However, Ukrainian law enshrines the principle of agreements' freedom that gives entrepreneurs the right to enter into any type of agreements/contracts. Exceptions are only those agreements that are expressly and exclusively prohibited by the laws of Ukraine.

Special features of consignment agreements

Depending on the properties of the goods, the term of the consignment agreement can be from three months to one year or one to five years. If the goods have not been sold within the specified term, the parties may stipulate in the agreement that the Ukrainian business partner undertakes to repurchase the goods at its own expense or return them to a foreign seller.

A foreign seller can set both the maximum and minimum goods price. The agreement must clearly specify the time of payments receipt to the account of the foreign seller.

The agreement must also specify the amount and procedure for payment of remuneration to the consignee (Ukrainian trading partner). Such remuneration can be defined as a certain percentage of the sold products' value, or it can be a clearly defined amount. The term of remuneration's payment is also set in the agreement.