

Chapter 6

The Contract

Negotiating with Agents

The interviews are over. The agent of your choice has met your head office staff. It is time to complete the negotiation on all those important points you have been discussing. Some compromise — on both sides — is usually in order. It is rare that even the agent you selected as the best from the interview process fits exactly into the pattern of working with your company that you envisaged in your blueprint for the ideal agency.

There are five main topics that require considerable discussion when a manufacturer and an agent start negotiating to reach an agreement on how to do business together. These are:

1. Duration of the relationship
2. Duties to be performed by each party
3. Territory, specifics on geographic area and customer accounts, including exclusivity elements, if any
4. Commission and salary, if applicable; also, any draws on commissions or bonuses
5. Termination of the relationship

At some point soon, you will need an experienced lawyer to draft your formal agreement, but for now, you and the agent have much to discuss before you are ready to reach such an agreement.

Some topics that require a "give and take" discussion during the negotiation process between manufacturer and agent are (a) territory, (b) exclusivity, (c) rate of commission, and (d) other considerations. The points outlined here are only examples and may vary considerably in particular cases.

(a) Territory

Let us suppose that the agent or agency you selected covers a geographic territory larger than the one you planned for your first marketing and sales effort in the U.S. Because of a good reputation and the demonstration of considerable initiative in the interview, you want to work with that agent. However, the agent will not budge on this negotiation point, saying that the territory must be kept as it is to keep his/her sub-agents satisfied and to fully represent all product lines. What do you do? You might decide to give on this point, provided that there is a joint strategy between each party to ensure that the product is promoted only to customers in the territory whose orders your plant is capable of supplying on time. This last proviso requires the agency to give a little on its original position.

When growth in production capacity at your plant is accomplished, the agency will be able to sell to all your potential customers in its territory without overextending your capability to supply. If you believe this agency can do a good job for you, and if you really want to sign a contract, you might decide to accept the agency's territorial boundaries as the market area for your product line.

(b) Exclusivity

The negotiation on exclusivity can be tricky. Make sure you define exclusivity in terms that both you and the agent can live with. Most agents ask for exclusive rights to all sales in the territory. What if you, the Canadian supplier, want to keep a few traditional house accounts that you might have built up over the years? Someone has to give on this point. What if a new buyer in the territory wants to deal directly with the Canadian plant and bypass the agent? This is negotiable, but be prepared to consider paying a commission to the agent, even if you agree that your plant can sell directly to a few customers who insist on this practice.