



International Wine Law Association

Association International des Juristes du Droit de la Vigne et du Vin

AGREEMENT BETWEEN PRODUCERS AND SUPPLIERS

DUILIO CORTASSA

Logroño - La Rioja

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STUDIO LEGALE LIBONATI - JAEGER

4th SESSION

TERMINATION OF AGREEMENT



Termination of the commercial relationship in contracts entered into among a producer and its distributors or agents is evidently as crucial in Italy as it is in other European jurisdictions



AGENCY

Par. 1742 of the civil code:

One party (the agent) engages to promote steadily, on behalf of the other party (the principal), agreements in a territory

DISTRIBUTION

Distribution agreements are not governed by specific statutory provision

AGENCY AND DISTRIBUTION:

COMMON FEATURES AND DIFFERENTIAL



AGENCY

General rules:

- The agent promotes the activities of the principal
- The agent's activity should be on a permanent, rather than on an occasional, basis

DISTRIBUTION

General rules:

- Par. 1322 of the civil code provides for the so-called freedom of contract.

AGENCY AND DISTRIBUTION:

COMMON FEATURES AND DIFFERENTIAL



AGENCY:

- The agent may be granted the right to enter into agreements in the name and on behalf of the principal
- The agency agreement shall be in writing

DISTRIBUTION:

The most common clauses

Exclusivity

- Duration and termination of the agreement
- Obligations of Supplier
- Undertaking not to compete
- Price imposed
- Applicable Law

AGENCY AND DISTRIBUTION:

ABOUT CONSEQUENCES OF TERMINATION



- In a fixed-term agreement, the parties may not terminate the agreement prior to the expiry date;
 - the term is in fact one of the key elements of agreements;
 - the parties may negotiate earlier termination following the occurrence of any given event, e.g., one party makes serious or persistent default in performing and observing any of its obligations under the agreement (par. 1564 of the civil Code)
- In any case, the agreement is terminated upon its expiration.



TERMINATION OF AGREEMENTS

ABOUT CONSEQUENCES OF TERMINATION

In case no final term is agreed upon, the agreement may be terminated by both parties by giving the other party reasonable notice, *i.e.*, adequate to avoid damages to the other party.

The agreement may be terminated without notice, although the terminating party shall indemnify the other (par. 1569 of the civil Code).

In case the agreement is terminated following the occurrence of breach of exclusivity, notice is not required.



TERMINATION OF AGREEMENTS

ABOUT CONSEQUENCES OF TERMINATION

Although indemnity for termination is provided for self employed commercial agents, this may be contemplated in a distribution agreement as well.

In some jurisdictions (Portugal, Belgium, Germany, Spain) indemnity may be due even in distribution agreements.

Under Italian law, the distributor is not granted a right to indemnity.



AGENCY

The EEC 653/86 directive has been implemented in Italy, by amending par. 1742 *et seq.* of the civil code (last amended in year 2000), regulating the agency.

Collective agreements (“*Accordi Economici Collettivi*”), entered into between Unions and the organizations of entrepreneur, may also apply.

DISTRIBUTION

Distribution agreements are not governed by specific statutory provision



TERMINATION OF AGREEMENTS

ITALY

The Italian Supreme Court referred to the ECJ the interpretation of par. 17 and 19 of Directive n. 653/1986, which amended par. 1751 of the civil code.

As the ECJ held in case C-465/04, article 19 of Directive 86/653 must be interpreted as meaning that the indemnity for termination of contract which results from the application of Article 17(2) of the Directive cannot be replaced, pursuant to a collective agreement, by an indemnity determined in accordance with criteria other than those prescribed by Article 17, unless it is established that the application of such an agreement guarantees the commercial agent, in every case, an indemnity equal to or greater than that which results from the application of Article 17.



TERMINATION OF AGREEMENTS

ITALY

According to the Italian Supreme Court (nr. 12724/2009), indemnity, determined in accordance with criteria prescribed by collective agreements, can be re-calculated by the judge according to par. 1751 of the civil code,

meaning that

the indemnity for termination of contract, which results from a collective agreement, determines but a minimum criteria.

According to collective agreements, the commercial agent shall be entitled to an indemnity if and to the extent that:



TERMINATION OF AGREEMENTS

INDEMNITY

1. The amount of the indemnity may not exceed a figure equivalent to an indemnity for one year calculated from the commercial agent's average annual remuneration over the preceding five years and if the contract goes back less than five years the indemnity shall be calculated on the average for the period in question;
2. The agent has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers;
3. The agent has increased the volume of business; two factors play a role in defining the indemnity: initial and final increase in sales in the territory; a percentage of indemnity according to said increase in sales.



TERMINATION OF AGREEMENTS

EFFECTS OF TERMINATION - STOCK

EFFECTS OF TERMINATION

- The Distributor shall remove and discontinue the use of all signs, stationery, advertising and other material that would make it appear to the public that the Distributor is still dealing the Products or has any connection with the Principal.
- All rights granted by the Principal to the Distributor shall be relinquished by the Distributor.
- The Distributor shall return all price lists and other materials supplied by the Principal to the Distributor and shall cease representing itself as having any connection with the Principal.



TERMINATION OF AGREEMENTS

ABOUT CONSEQUENCES OF TERMINATION - STOCK

STOCK

A crucial issue, normally arising in the event of termination of a distribution agreement, is, whether the Principal has, or has not, an obligation to repurchase the stock from the Distributor.

•express clause: <<*The Distributor shall supply the Principal with a list of any Products which are held unsold by the Distributor and the Principal shall have the option to buy all or any of the Products for a price equal to the net cost of the Products. The Distributor shall deliver to the Principal, or as it may direct, at Principal's expense, Products so repurchased in accordance with the Principal's instructions*>>

•In a number of cases, the Courts ruled for an obligation of the Principal to repurchasing the stock even though no contractual provision was set forth. Those were generally cases where the Principal terminated the agreement without due notice, *i.e.*, where the Distributor was not granted sufficient time to sell the stock.



TERMINATION OF AGREEMENTS

ABOUT CONSEQUENCES OF TERMINATION - ITALY

APPLICABLE LAW

- It is normal practice that the parties choose the applicable law to the agreement by an *ad hoc* clause:

<<This agreement is governed by the Laws of Italy>>

- To the extent that the law applicable to the contract has not been chosen, in accordance to par. 57 of the Act 218/1995 (Italian Private International Law), the agreement shall be governed according to EC Regulation n. 593/2008 (Rome I)





TERMINATION OF AGREEMENTS

ALTERNATIVE DISPUTE RESOLUTION: ARBITRATION

Alternative Dispute Resolution allows for a resolution of disputes within time-limits and through methods that are different from judicial proceedings.

express clause:

<< Any dispute arising out of or in connection with this agreement shall be finally settled in accordance with the arbitration rules >>

It may prove useful to refer arbitration to a specific organisation, such as, for instance, the Chamber of Arbitration of Milan, which specializes in commercial dispute resolution.



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