

Short Form Appointment Letter for Commercial Agents Operating in Europe

IMPORTANT NOTE - PLEASE READ CAREFULLY

This document is intended as a guide for European agents who wish to use a brief letter to confirm their appointments. It is not for use by non-European agents. Even in the case of European agents, this document is not a substitute for a fully negotiated and properly drafted agreement. This document does not constitute legal advice, which should be sought in any particular case. Accordingly, no liability is accepted in respect of it by any person or organisation by or through which it may be provided.

AGENT'S HEADED PAPER^{1 2}

To:

.....

[Principal]³

[Address]

[Date]

.....

Dear [Principal]

AGENCY AGREEMENT

This letter sets out the terms we have agreed concerning our appointment as your commercial agent.

1. Appointment of Agent

We will act as your³ agent in the Territory and for the Products referred to below.

2. Territory

Our appointment is in respect of supply of Product to customers in []⁴

3. Product

Our appointment is in respect of supply of []⁵ to customers in the Territory.

4. Commission

You will pay us commission at a rate of 8%⁶ plus VAT of the total invoice value (excluding VAT if any) of Product supplied to customers in the Territory [pursuant to orders obtained by us]⁷

5. Term

Our appointment will [be for a period of [] [years] [months] from the date of this letter] **OR** [continue until terminated by you or us on [six months'] written notice]⁸

Yours sincerely,

For and on behalf of
[Agent]

NOTES

- ¹ This document is intended for use in an appointment of a commercial agent. A commercial agent is an independent intermediary who has continuing authority to negotiate the sale and purchase of goods or services on behalf of his principal. This document may not be suitable for agents for the sale of services in certain European jurisdictions.
- ² It is important to identify properly the person or entity contracting with the principal. In many cases confusion arises, for example as to whether the agent is appointed personally as an individual, or whether it is the agent's company which is appointed.
- ³ Again identify carefully the entity or person with which the agent is contracting. Is this, for example, the principal's local subsidiary, or its group holding company. Is the agent to act for more than one company?
- ⁴ In the UK, Ireland, Spain, Germany and Switzerland, consider inserting "exclusive" **OR** "sole" (see below).

An agency appointment may be made on an exclusive, sole or non-exclusive basis. As a general rule, in jurisdictions other than the UK, Ireland, Spain, Germany and Switzerland, the appointment of the agent will be deemed to be on the basis that the agent is the only agent in the territory, and that the principal will not sell himself sell in the agent's territory, or at least that the agent will be entitled to commission on sales made by the principal if he does. In jurisdictions other than UK, Ireland, Spain, Germany and Switzerland, it will therefore usually not be necessary to state expressly in the appointment letter that the agent's appointment is exclusive or sole.

This is however necessary in the UK, Ireland, Spain, Germany and Switzerland. As a general rule, if the agent is an exclusive agent, the principal guarantees that the principal will not appoint another agent in the territory and also that the principal will not itself sell directly in the agent's territory. If the agent is a sole agent, the principal guarantees only that the principal will not appoint another agent in the territory, but retains the right to sell directly in the agent's territory either to specified house accounts or generally in competition with the agent. If the agent is a non-exclusive agent, the principal gives no guarantee that the principal will not appoint another agent in the territory, and also retains the right to sell directly in the agent's territory both to specified house accounts and generally in competition with the agent. These terms are often misunderstood by both agents and principals. It is vital to choose the right basis for the agent's appointment.

In the UK, Ireland, Spain, Germany and Switzerland, the letter of appointment must state that the appointment is sole or exclusive, unless the agent wishes to be appointed on a non-exclusive basis. In addition:

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- where the appointment is on an exclusive basis, the following further paragraph should be added in Section 1 of the appointment letter - “You agree not to supply the Products to customers in the Territory other than through us pursuant to this letter.”
 - alternatively, where the appointment is on a sole basis, the following further paragraph should be added in Section 1 of the appointment letter - “You agree not to appoint anyone other than us to sell the Products for you to customers in the Territory”

⁵ Insert description of Territory, or refer to a map which will be attached to the letter when it is sent.

⁶ Insert here a description of the products which the agent is appointed to sell. If necessary, refer to an attached list. Consider whether the appointment should be in respect of all products manufactured from time to time the principal, or all products of a particular description manufactured from time to time the principal.

⁷ Insert commission rate

⁸ Words in brackets for non-exclusive agent only. See note 4.

⁹ Choose the applicable option, or amend as applicable