

実際の失敗事例から学ぶ 英文契約で失敗しないための ノウハウ

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KATAYAMA LAW AND ACCOUNTING FIRM

はじめに

1. 契約締結前の注意点（成否は契約前から決まっている？）
2. 契約締結時の注意点（契約書はただのお題目なのか？）
3. 契約終了時の注意点（終わらせるほうが始めるより難しい？）
4. よくあるトラブル事例と対処法
5. おまけ（販売店契約書の条項例）

契約締結前の段階の重要ポイント

- NDA, MOU, LOIの必要性と役割（秘密情報の漏洩・設備投資金の損失・中抜きの場合）
- 重要な内容はログに残す
- 交渉は急げ？
- 契約書がないほうがましなケースはある？

契約締結時の段階の重要ポイント 1

- ▶ 販売店契約の意味（受注義務？）
- ▶ 独占販売権だけ取得して注文しないケースへの対処法
- ▶ 永遠の独占販売権を取得したい？
- ▶ 独占販売権を制限する方法（EU競争法は厳しい）
- ▶ 競合品の取扱いは禁止できる？
- ▶ 出荷前全額払い条項は本当に安全か？
- ▶ 納期の意味は国によって違う？
- ▶ 不可抗力免責は当たり前？

契約締結時の段階の重要ポイント 2

- ▶ 双方に義務があれば本当に平等？
- ▶ 用語選びは慎重に（たった1語が命取りに）
- ▶ 保証について
- ▶ 補償と免責について
- ▶ 準拠法や裁判管轄（仲裁地）は本当に最重要事項？
- ▶ 契約書を取り交わすときの注意点
- ▶ 訳文をつけるときの注意点

契約終了時の段階の重要ポイント

- ▶ 補償金請求（不可避の販売店保護法に注意）
- ▶ 契約の終了のさせ方
- ▶ 販売店の立場から契約終了への対処法
- ▶ 在庫処理
- ▶ 代理店のコミッション

よくあるトラブル事例と対処法 1

- ▶ コンプライアンス意識
- ▶ 域外適用に注意（FCPA／Bribery Act／Competition Law／GDPRなど）
- ▶ 商品を納品させてくれない！？
- ▶ 成分表の裏話
- ▶ 支払いの確保の方法（債権回収はほぼ無理？）
- ▶ 競業は防げない？
- ▶ 冒認商標

よくあるトラブル事例と対処法 2

- ▶ 第三者の知的財産権侵害がないとの保証はすべきか？
- ▶ 並行輸入は止められない？
- ▶ 経営者の交代に注意
- ▶ 正しい海外弁護士使い方
- ▶ 正しいトラブル交渉の仕方（交渉の優位性）
- ▶ トラブルから学ぶ
- ▶ 和解の重要性

条項例 : Distribution Agreement

- ▶ Exclusive (独占) or None-Exclusive (非独占)
- ▶ Territory
- ▶ Non-Competition
- ▶ Minimum Purchase Quantity/Sales Forecast
- ▶ Best Efforts/Reasonable Efforts

具体例 : Distribution Agreement

- ▶ Expenses (Distributor's Responsibility)
- ▶ Indemnification
- ▶ Product Liability
- ▶ Limitation of Liability
- ▶ Liquidated DamagesとPenalty

具体例 : Distribution Agreement

- ▶ Compensation for Goodwill
- ▶ Risk of Loss/Title
- ▶ Time is not of the essence
- ▶ Confidentiality
- ▶ Trademark

具体例 : Distribution Agreement

- ▶ Translation
- ▶ Term/Termination
- ▶ Remaining Stock (Repurchase/Sell Off)
- ▶ Governing Law
- ▶ Arbitration/Jurisdiction

具体例：Distribution Agreement

- ▶ 現地法の規制に注意（Exclusiveは可能？／代理店保護法）
- ▶ 域外適用される法律に注意（FCPA／Bribery Act／Competition Law／GDPR）

Exclusive (独占) or None-Exclusive (非独占)

Supplier hereby appoints Distributor as a distributor of the Products in the Territory, and Distributor hereby accepts said appointment, all in accordance with the terms and conditions set forth herein

Territory

“Territory” shall mean [].

Non-Competition

For the term of this Agreement plus one (1) year after termination or expiration of this Agreement, Distributor shall not, directly or indirectly, in the Territory, offer, promote, sell or distribute goods which are of the same kind, similar to or compete directly or indirectly with the Products.

Minimum Purchase Quantity/Sales Forecast

The “Minimum Purchase Quantity” shall be the purchase amount of the Products equal to []. Distributor shall take delivery and pay for not less than the Minimum Purchase Quantity in each annual period. In the event that Distributor fails to attain the purchase of the Minimum Purchase Quantity for any such period, Supplier may terminate this Agreement, by giving written notice to Distributor, with immediate effect.

Best Efforts/Reasonable Efforts

Distributor hereby agrees to exert its best efforts during the term of this Agreement to vigorously promote the sale of the Products throughout the Territory.

Expenses (Distributor's Responsibility)

Distributor shall be responsible for all expenses incurred by Distributor in connection with the implementation of this Agreement, including without limitation salaries, office and travel expenses of Distributor's employees, advertising and trade shows within the Territory and any and all taxes which may be imposed on Distributor within the Territory

Indemnification

Product Liability

Supplier shall, at its own cost and expense, indemnify and hold harmless Distributor, its directors, officers, employees, customers and agents, from and against any and all losses, damages, liabilities, penalties claims, demands, suits, or actions, and related costs and expenses of any kind including, without limitation, expenses of investigation and recall, counsel fees, judgments and settlements, for injury to or death of any person, property damage or any other losses suffered or allegedly suffered by any person or entry and arising out of or otherwise in connection with any defect or alleged defect of the Products delivered by Supplier to Distributor or its customer under this Agreement.

Limitation of Liability

Goodwill

In the event of expiration or termination of this Agreement by either party in accordance with any of the provisions of this Agreement, neither party shall be liable to the other, because of such expiration or termination, for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, leases or commitments in connection with the business or goodwill of Supplier or Distributor.

Risk of Loss/Title

Title to and Risk of loss of Products shall transfer from Supplier to Distributor upon delivery by Supplier of Products on the carrier.

Time is not of the essence

Supplier shall not guarantee delivery dates; Supplier can only provide an estimate. Time is not of the essence with respect to all deliveries made by Supplier. Any delay in delivery by Supplier shall not constitute a material breach of this agreement. Supplier will not be liable to Distributor for any damage or loss (including without limitation indirect or consequential loss) howsoever caused as a result of delivery taking place later than estimated.

Confidentiality

As used herein, “Confidential Information” shall mean any confidential information either in writing or by oral, disclosed by either Party (“Disclosing Party”) to the other Party (“Receiving Party”), including, but not limited to, any non-public and proprietary information relating to the business and affairs of Disclosing Party, but does not include information which is: (i) public information, (ii) made public without the fault of Receiving Party, (iii) owned by Receiving Party at the time of the disclosure, or (iv) disclosed by the public order to the extent of such order. Receiving Party shall not disclose or use Disclosing Party’s Confidential Information without the prior written consent of Disclosing Party except as required to achieve the purposes of this Agreement.

Trademark

Supplier grants to Distributor the non-exclusive right to use the “[]” trade mark to enable Distributor to market, promote, solicit demand for and sell the Products in the Territory during the term of this Agreement.

Translation

Distributor may translate the sales materials provided by Supplier and produce localized materials for the Territory.

Term/Termination

(1) Supplier will have the right to terminate all or part of this Agreement or any individual contract by written notice to Distributor with immediate effect if Distributor:

(i) becomes bankrupt or insolvent or unable to pay its debts as they fall due, ceases to carry on its business, has a receiver, liquidator, administrative receiver, administrator, trustee or other similar officer appointed over the whole or part of its assets, or an order is made or a resolution is passed for the winding up of Distributor or if it makes an arrangement or assignment for the benefit of its creditors or if any analogous event to any of the foregoing occurs in respect of Distributor anywhere in the world; or

(ii) breaches any of the terms of this Agreement or any individual contract and, in the case of a breach capable of remedy, fails to remedy the same within fourteen (14) days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.

Remaining Stock (Repurchase/Sell Off)

Upon termination of this Agreement for any reason, Supplier may repurchase from Distributor the stocks of the Products at the same price as was paid by Distributor for those stocks plus reasonable transport and Import costs to Distributor's warehouse. If Supplier does not repurchase the stocks, Distributor shall be entitled to market, solicit orders for and sell all remaining stocks of the Products under the same terms and conditions before the termination of this Agreement

Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Japan.

Arbitration/Jurisdiction

Arbitration

All disputes, controversies or differences which may arise between the parties hereto, out of or in relation to or in connection with this Agreement shall be finally settled by arbitration in [name of city], in accordance with the Commercial Arbitration Rules of The Japan Commercial Arbitration Association.

Jurisdiction

Any dispute arising out of this Agreement shall be subject to the exclusive jurisdiction of the Tokyo District Court.



KATAYAMA
LAW AND ACCOUNTING FIRM

片山法律会計事務所

【講師略歴】

- 2001年 早稲田大学法学部卒業 司法試験合格
- 2003年 弁護士登録 本間合同法律事務所入所
- 2009年 留学等のため渡英 University of Southampton L.L.M (法学修士) コース・ワーク参加
- 2010年 法律事務所Hill Dickinson L.L.P (ロンドン事務所) にて勤務研修
- 2012年 上記約3年間の英国留学・実務経験を終了し帰国
- 2015年 日本弁護士連合会の中小企業海外展開支援弁護士に選任 (現職)
- 2017年 本間合同法律事務所パートナー片山智裕弁護士とともに「片山法律会計事務所」を設立

【取扱分野】

英文契約書の翻訳・修正・作成業務／企業の海外進出・展開サポート業務／国際取引に対する法務サポート業務

【問合せ先】

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