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**SALES REPRESENTATIVE AND DISTRIBUTORSHIP
CONTRACTS IN INDIANA**

Prepared by:

KIGHTLINGER & GRAY, LLP

Van T. Willis
Vwillis@k-glaw.com
(812) 949-2300

New Albany:
Bonterra Building, Ste. 200
3620 Charlestown Rd.
New Albany, IN 47150
Tel: (812) 949-2300
Fax: (812) 949-8556

Indianapolis:
Market Square Center, Suite 600
151 N. Delaware Street
Indianapolis, Indiana 46204
Tel: (317) 638-4521
Fax: (317) 636-5917

Evansville
7311 Eagle Crest Blvd.
Evansville, IN 47715
Tel: (812) 474-4400
Fax: (812) 474-4414

Indiana law will generally be applicable to relationships between domestic and foreign companies, sales representatives, and/or distributors of particular products when those entities contract to market, sell, and/or distribute products in Indiana.

Freedom of Contract

Indiana courts recognize that it is in the best interest of the public that parties should not be unnecessarily restricted in their freedom of contract. The parties to a contract have the right to define their mutual rights and obligations. Thus, there is a strong presumption of enforceability of freely bargained agreements, and Indiana courts will generally not add contract provisions that were not agreed on by the parties, make new contracts for the parties, or eliminate provisions from existing contracts.

An exception to the freedom of contract exists when the contract at issue contravenes public policy. Courts may decline to enforce private agreements on public policy grounds when agreements contravene a statute, clearly tend to injure public in some way, or are otherwise contrary to declared public policy. For example, Indiana law – by statute – holds that contracts which lessen full and free competition in the importation of merchandise into Indiana are void as against public policy.

Implied and Ambiguous Terms in Written Contracts

Generally, the interpretation of written contracts is controlled by the language of the contracts. If the terms of a written contract are clear and unambiguous, those terms are conclusive and Indiana courts simply apply the terms as written. However, if the terms are such that reasonable people could come to different conclusions as to the meaning of the terms, Indiana courts will look beyond the language of the contract to interpret the terms at issue.

In any contract for services, Indiana law implies a duty to work skillfully, carefully, and in a workman-like manner. Indiana does not otherwise impose a generalized duty of good faith and fair dealing on every contract, however such a duty may apply where the contract terms are ambiguous or where the terms expressly apply such a duty.

Exclusivity and Anti-Trust Considerations

Indiana law recognizes that manufacturers have legitimate interests in how their products are sold. As such, it is permissible for a manufacturer or distributor to grant an exclusive agency in a specific area. An agreement for exclusive dealing in particular goods imposes, unless otherwise agreed, an obligation on the seller to use the best efforts to supply the goods and on the buyer to use best efforts to promote their sale. Under an exclusive dealing contract, the exclusive agent is further required to use reasonable effort and due diligence in the expansion of the market or promotion of the product.

Federal and state anti-trust laws may be relevant to the application and interpretation of exclusivity agreements. Various Indiana statutes prohibit contracts which tend to lessen competition or are in restraint of trade. The state statutes dealing with monopolies and restraint of trade are generally based on federal anti-trust laws. Note that exclusivity provisions in franchise agreements and exclusive dealership contracts do not violate Indiana antitrust law.

Choice of Law

Indiana choice of law doctrine favors contractual stipulations as to governing law. Parties to a contract may thus choose what law will govern the contract, unless the application of another state's law is forbidden by Indiana statute and Indiana has a materially greater interest in the litigation than the state chosen in the contract. If, however, a choice of forum or choice of law clause in a contract operates as a prospective waiver of a party's right to pursue a remedy, the clause is void as against public policy.

Non Compete Provisions

Non-compete provisions are disfavored under Indiana law. Such provisions will be enforced only if they are reasonable with respect to the parties to the contract and the public interest. If portions of a non-compete agreement are found to be unreasonable, an Indiana court may not create a reasonable restriction under the pretext of interpreting the contract. If, however, the agreement is easily divisible into parts, and some parts are reasonable while others are unreasonable, the court may choose to enforce the reasonable portions only. In doing so, the court will not add terms that were not originally part of the agreement.