

Supply & Distribution Agreements...

Tips for negotiating a supply agreement follow. If you are the customer:

- a. Pricing – press for fixed pricing or adjustments to reflect CPI only. Resist adjustment for raw material and other costs;
- b. Termination – seek limited termination unless an alternative supplier at similar prices is readily available;
- c. Liability – don't allow limitations to preclude claims for consequential losses;
- d. Delivery – if quantity and timeliness are critical, set KPIs that trigger penalty provisions. Avoid linking supply obligations to forecasts provided.

If you are the supplier:

- a. Opposite – your viewpoint on each of the above will be the opposite;
- b. IP – ensure that the customer is obliged to respect any branding and IP rights;
- c. Term – press for a long term especially if expenditure is required in developing tooling or machinery;
- d. Confidentiality – this is important if your margins and pricing are sensitive.

Tips for negotiating a distributor agreement follow. If you are a distributor:

- a. Exclusivity – press for this but beware that this may well come with an obligation to meet agreed sales targets;
- b. Territory – determine the territory within which these sales targets are achievable. Watch for freight costs;
- c. Product claims – where possible defer these to the supplier.

If you are the supplier:

- a. Marketing plans – require minimum marketing expenditure and consultation over plans;
- b. IP – ensure the distributor is obliged to appropriately brand all product distributed;
- c. Payments – ensure these are not linked to payment by customers. Debtor risk should sit with the distributor not the supplier.

In all cases supply and distribution arrangements need to comply with anti-competitive behaviours. Price fixing and generally collaboration with competitors is prohibited in the New Zealand market. This extends to agreements to restrict collective output (and thereby alter the supply and demand equation). Principles of competitor behaviour require the market to reach its own conclusions on supply and demand levels. These issues are very much in focus at present with substantial changes to the Commerce Act under way.