

Things You Need to Know About Your Agreements

All companies enter different engagements over the course of their business. In this article, we shall go over some of the most important commercial agreements and what you need to look out for.

1. Collaboration Agreement:

Often, companies seek to collaborate with one another to further their joint interests. For example, our office recently handled a marketing collaboration agreement between a major industrial aluminum company and a distributor in Eilat.

A collaboration agreement may be drafted in a number of formats - an overall partnership between the two companies, a specific partnership to perform a specific activity, or selling/buying goods or services, while determining the payment terms and prices between the two companies in advance.

With regards to partnerships, one must be extra cautious; as mixing the companies' assets and liabilities may lead to irregularities and disputes when settling accounts, and the disputes may end up being resolved in court. Establishing a separate limited liability company to manage the partnership's activity can be a good solution for this type of partnership. This ensures that the companies' activities are not intermingled and the common business is managed transparently, clearly, and separately.

2. Sub-Contractor Agreements:

Many agreements are entered into between an ordering party and a sub-contractor. The parties have no relations other than for the purpose of the common deal or a common project, e.g. a construction project. Agreements with sub-contractors tend to be draconian and favor the ordering party (the prime contractor) disproportionately, especially in construction. The ordering party - usually a large and powerful company - stipulates that the sub-contractor will bear all insurance costs, provide guarantees, will be absolutely responsible for the quality

of the work and for damages, will consent in advance to changing the project's time table and quantities, and so on and so forth - clauses that impose binding limitations and duties on the sub-contractor.

Many sub-contractors sign these agreements without checking them out of laziness or despair - they don't believe anything could be done about the agreement anyway. This is a mistake.

Our firm handles agreements between sub-contractors and major companies and successfully amends and alters draconian clauses. Amending these clauses can have major financial implications.

3. Distribution Agreement/Exclusivity Clause:

These are very common agreements among importers or manufacturing companies who wish to distribute their products to a wider market. The agreement's essence is distribution and sales services, in consideration for a payment that's usually derived as a percent of the return.

Oftentimes, distributors demand exclusivity - meaning that the importer or manufacturer will not distribute its products through any other party except for the specific distributor the engagement is entered into with.

These types of agreements must have non-disclosure and non-compete clauses, and a mechanism to enable each party to terminate the engagement should it transpire that the engagement is not yielding the expected business results.

The distributor often invests substantial sums into marketing the products and the agreement must acknowledge this, especially the possibility that the engagement will end and the distributor will claim a reimbursement of its investment in marketing the product.

4. Lease Agreement:

Lease agreements usually refer to real estate, but one may also lease equipment, cars or machinery. In such agreements, it's very advisable for the lessor to have the leasing company's owners sign a personal guarantee to cover the leasing company's duties, unless this is an established company and there is no chance its payments will not be

honored. In addition, each case must be reviewed individually and the appropriate sections be adjusted accordingly. There is no substitute to an agreement that is drafted by a person who controls all elements of various commercial agreements and can creatively combine them.