WHAT IS A BUYING AGENT? : THE BUYING AGENT CONTRACT

Buying Agents are an important part of any company's success. The purchasing force serves as the external face of the company, and the individuals and organizations that acquire goods on its behalf should be carefully selected. Any manufacturer, distributor or trader must make sure to obtain high-quality products for a good price. The company must explain to its buying agents what goods they should be procuring and where they can find them.

For a small company that's just starting out, an independent buying agent is often the best choice, especially to purchase goods in international markets. Since they are often paid on a commission basis, there is no upfront investment of money and effort. They will be paid as the company is billed for the products it receives, and the two entities can build and grow together.

A good **Buying Agent Contract and Agreement** outlines the rights and responsibilities of a company and the individuals and organizations that will procure its supplies. Vague, verbal agreements can lead to disputes and ill will. It's best for all parties to detail their respective roles in a contract before making a first purchase. The merchandise used in manufacturing and production serves as the foundation of the business.

In this article we explain what a buying agent is and what are the main clauses and provision that a buying contract must have, especially for companies involved in international business.

WHAT IS A BUYING AGENT?

- **Public representative**: a buying agent is a public representative of a company. The quality of a company's end product will reflect on an agent's reputation. Both parties should think carefully about these roles and responsibilities before signing the enclosed document.

- **Careful writing**: allow each party (the Company and the Agent) to spend some time writing the agreement. This will reduce the likelihood, or at least the efficacy, of a claim that a party did not understand any terms or how those might affect the agreement as a whole.

- **Exclusivity:** usually buying agent contracts include an exclusivity clause. This means that the company is not entitled to hire additional agents to purchase the same goods in the same geographical area where the agent acts.

- **Objectives of the agreement**: before sitting down to sign, decide exactly what your goals are for the agreement. Will the protections guard your company's information? Is the commission percentage commensurate with the time and energy needed to purchase the goods? Take a moment to clarify the terms and conditions of your agreement before drafting them in written form.

- **Review the contract**: both parties should review the completed agreement carefully to ensure that all relevant deal points have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not stated expressly in the document.

- **Copies of the contract**: sign two copies of the agreement, one for you and one for the other party. Keep your copy of the signed agreement for your records. At the end of its term, you and the other party can revisit its provisions and consider whether to renew. Depending on the nature of its terms, you may decide to have your agreement witnessed or notarized. This will limit later challenges to the validity of a party's signature.

THE BUYING AGENT CONTRACT

Companies should sign a contract with their buying agents. In the **Buying Agent Contract** one party (Principal) appoints another (Buying Agent) to represent and buy a specific kind of products within a specific territory that can be a country or multiple countries. The responsibilities of the Buying Agent may include, among others, the following: identifying manufacturers and suppliers of products within the described territory; negotiating prices, terms of delivery and payment; managing the international transport of documents which comply with export and import procedures; assisting and serving as a translator of the Principal´s representatives when visiting the country to negotiate purchase contracts or to check on the manufacturing of products.

The following clause-by-clause instructions will help understand the terms of the agreement.

- **Introduction.** Write in the date of the agreement, the name of each party, and an indication of each party's "type" (e.g., individual, corporation, partnership, LLC, etc.).

- **Recitals.** A report of each party's intent and ability to make the Buying Agent a representative of the Company.

- **Purpose and Appointment**. Appoints the Buying Agent as a purchasing agent of the Company, and emphasizes that this is "exclusive" appointment. Attach a list of the kind of Merchandise to be purchased by the Buying Agent as Exhibit A to the Agreement.

- **Confidential Information**. Provides both a definition of confidential information and a reminder of the Buying Agent's duty not to disclose that information.

- **Nature of Relationship**. Explains that the Buying Agent is not an employee or partner of the Company. This is an important distinction for many reasons, including those relating to insurance coverage, legal liability, and taxes. This agreement seeks to emphasize this divide, but both parties should take care not to blur the line between independent contractor and employee.

- **Territory.** Delimits the geographical area in which the Buying Agent's acquisition efforts should be focused.

- **Manufacturers, Suppliers, and Vendors**. Allows you to describe the types of manufacturers, suppliers, and vendors the Buying Agent should be seeking out. If you and the other party agree that the Buying Agent will not receive commissions on sales to current suppliers of Company merchandise, attach a list of those existing suppliers to the Agreement as Exhibit B.

- **Title to Merchandise**. An explanation that the Company owns the Merchandise purchased by the Buying Agent on its behalf.

- **Quality of Merchandise**. Details the Buying Agent's duty of inspection and outlines the Parties' duties if the Merchandise is defective. This section also indicates that the Buying Agent is not guaranteeing the quality of the Merchandise purchased.

- **Compensation.** (a) Write in the commission percentage that will apply to the purchases. (b) Indicate the amount of time the Company has to forward commission payments to the Purchasing Agent. For many businesses, this will be about 30 days. Depending on the Company's procedures for accounts payable, you may want to allow for a longer or shorter time. (c) Explains that the Company need not pay commissions on defective Merchandise. (d) The circumstances under which no commission will be given. (e) Emphasizes that the commission percentage is the Buying Agent's only compensation. (f) Notes that the Buying Agent will pay for its own ordinary expenses. This is another reflection of the fact that the Company and the Buying Agent are functioning as separate entities. (g) Indicates that the Buying Agent is responsible for paying its own taxes on the money it receives (i.e., it is not receiving a "salary" as an employee of the Company and the Company will not withhold those amounts).

- **Billing**. An explanation of the manner in which the Buying Agent will be reimbursed for the items it acquires on the Company's behalf. Insert the number of days within which the Company must make this reimbursement.

- **Buying Agent's Services**. Lists the Buying Agent's obligations under the agreement.

- **Company's Representations and Warranties**. Details the Company's promises under the agreement.

- **Conflicts of Interest**. The Buying Agent's promise that it is not currently (and will not be) representing any other company or product that competes with the Company or its merchandise. The Buying Agent also indicates that it will provide a list of its current products/ clients and amend that list as it changes. The second part of this section indicates that the Buying Agent will not make purchases from companies in which it holds a financial interest.

- **Term**. Both parties must indicate how long the initial term will be. It may be a good idea to make the initial term one year, with continuing one-year renewals. This allows both parties enough time to test the relationship, without locking either into a long-term deal.

- **Termination**. Explains that certain actions or events will cause the agreement to end out of time, including written notice, material breach, or one party's entry into bankruptcy.

- **Return of Property**. This is an extremely important provision, and although it may seem obvious to you that property should be returned after the end of the agreement, this paragraph serves to make that plain.

- **Indemnification**. Protects each party from the financial consequences of the other's illegal or harmful conduct.

- **Use of Trademarks**. States the Buying Agent will not use the Company's trademarks inappropriately or acquire a trademark of its own that is similar to the Company's. For example, an agent for XYZ products can not apply for a trademark on Sam's XYZ Products. It also notes that the Buying Agent may not continue to use the Company's trademarks after the agreement terminates.

- **Assignment**. Explains that because the Buying Agent is serving in a 'personal' capacity in its representation of the Company, the Buying Agent cannot assign its interests and obligations under the agreement. However, if it obtains the prior written consent of the Buying Agent, the Company is entitled to assign its rights and obligations.

- **Successors and Assigns**. States that the parties' rights and obligations will be passed on to successor organizations (if any), or organizations to which rights and obligations have been permissibly assigned.

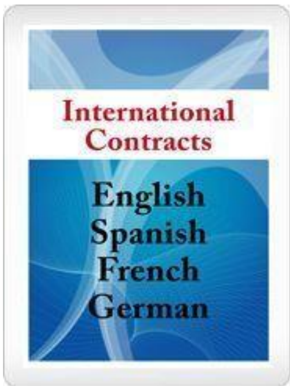
- **No Implied Waiver**. Explains that even if one party ignores or allows the other to break an obligation under the agreement, it does not mean that party waives future rights to require the other party to fulfill those obligations.

- **Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Company and the Buying Agent.

- **Severability.** Protects the terms of the agreement as a whole, even if one part is later invalidated.

- **Governing Law**. Allows the parties to choose those laws that will be used to interpret the contract if there is ever a dispute. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Write in the state's law that you would like to govern the agreement (usually the state you reside or operate your business.)

- **Counterparts / Electronic Signatures**. The title of this provision sounds complicated, but it is simple to explain. It says that even if the parties sign the agreement in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same agreement. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the agreement as a whole.



To obtain the model of the Buying Agent Contract in several languages, click on:

Buying Agent Contract
Contrato de Agente de Compras
Contrat d´Agents aux Achats