

Alcohol Beverage Distribution Contract Checklist

A Legal Resource Provided by Davis Wright Tremaine LLP

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Davis Wright Tremaine LLP is a full service law firm providing services to the wine industry in the areas of mergers and acquisitions and other business transactions, land use and real estate, alcohol regulatory and licensing, intellectual property, employment, and litigation.

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BASICS

- ✓ Choose your distribution partners wisely. Do your homework.
- ✓ Be careful of state alcohol-specific (or in some states, general) franchise laws, as these laws can supersede your contract provisions and impose restrictions on your distribution relationship.

DETAILS

- ✓ Define the specific products and/or brands the agreement will include (commodities, new brands, and brand extensions).
- ✓ Describe the territory appropriately: What is realistic market coverage, and will the appointment be exclusive?
- ✓ Sub-distribution approval rights: What are they?
- ✓ Channel expectations and priorities: What are they?
- ✓ Set expectations for orders and fulfillment.
- ✓ Set payment terms and delivery, invoicing, and returns, samples, and billback expectations.
- ✓ Include penalties/interest and recovery of collection costs for late payments or failures to pay.
- ✓ Describe marketing and merchandising expectations and get sales and placement goals and marketing support, if you can.
- ✓ Set reporting expectations and account visibility.
- ✓ Watch out for federal and state privilege or excise tax issues.
- ✓ Provide quality-control expectations for your product/brand.
- ✓ Provide for IP protection for your brand.
- ✓ Provide for termination (for cause—both immediately and with notice and opportunity to cure, depending on the circumstances;- and, ideally, without cause).
- ✓ Require prior approval by supplier upon wholesaler's change of ownership or assignment of the agreement.

ADDITIONAL CONSIDERATIONS FOR FRANCHISE MARKETS

- ✓ Define “good cause” carefully, if state law permits.
- ✓ Define how compensation will be calculated if discretionary termination and contract or franchise law requires payment.
- ✓ Describe approval standards for successors to wholesaler's business.

TOOLS FOR SUCCESS

- ✓ Be the distributor's favorite supplier.
- ✓ Visit the market and engage with the trade and consumers in the territory.



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