
Representative Agreements Must Be Rewritten Annually

by GLEN BALZER

Relationships between manufacturers' representatives and suppliers often unravel when a dispute arises that cannot be resolved. When this happens, the parties turn to courts, teams of attorneys, or arbitration. All three alternatives are expensive in terms of time and financial resources. Relying upon legal alternatives should be considered the solution of last resort. Representative agreements can be drafted in such a way that the likelihood of involving courts, attorneys or arbitrators is minimized.

This article explains that by ensuring that there is a provision for annual renewal of the agreement, termination can be accomplished without any legal involvement.

Annual Renewal: What Is It?

An annual renewal clause calls for the automatic termination and renewal of the agreement at the end of each calendar or fiscal year.

With an annual renewal provision in the agreement, neither party can believe that it was wrongfully terminated.

Such a clause can range from two to four paragraphs, and those paragraphs are rarely intricate. A typical clause might suggest, "This agreement will automatically end, effective December 31 of the first full year after the agreement was originally signed. Should either the supplier or manufacturers' representative choose to not enter into a new agreement, the party choosing to terminate the relationship must give written notice at least 30 days, and not more than 60 days, prior to December 31."

Termination during the middle of the contract year can be cumbersome. If one of the parties becomes dissatisfied with its partner during the middle of the year as the result of a specific reason, that party could attempt to terminate

the agreement "for cause." In some cases, the opposing party accepts the problem and responsibility for cause, such as understaffing, poor performance, failure to organize customer meetings or seminars, or any of hundreds of other "causes." In those cases, the representative agreement is terminated in the middle of a contract year; both parties go in their respective directions and life moves on. However, representatives and suppliers can and do frequently disagree over the nature, cause and responsibility of problems. If a supplier chooses to terminate the manufacturers' agent "for cause," and the agent disagrees with the supplier's assessment and ownership of the problem, it can be difficult, if not impossible, to prove cause with-

out outside legal assistance. A simple solution to this problem if there is an annual renewal clause in the representative agreement is to wait until 60 days prior to the end of the agreement, then draft and deliver a Notice of Intent to Terminate to the partner. In this case, both the supplier and the manufacturers' agent spend the final 30 to 60 days of the relationship dealing with their respective businesses and avoid spending energy squabbling over problems.

Advantages of Annual Renewal

There may be five or more advantages to incorporating annual renewal into a representative contract:

- First, legal proceedings rarely increase the long-term value or profitability of a supplier or manufacturers' representative. With an annual renewal provision in the agreement, neither party can believe that it was wrongfully terminated. As a result, neither party will be forced to burn management time and financial resources with attorneys, courts or arbitration. Resources cannot be squandered on these nonproductive activities.
- Second, annual renewal forces both parties to think about and acknowledge the real possibility of termination at the end of the year. Neither party can operate under the illusion that termination cannot happen. Do suppliers and manufacturers' agents sometimes operate under such an illusion? Unfortunately, yes. Observation of legal proceedings reveals the thinking of suppliers and agents prior to termination. Quite often, one of the parties believes that either the relationship was stronger than it really was, or that their

non-professional assessment of the agreement without an annual provision allowed them to believe that termination was not an authentic possibility. Inclusion of an annual renewal provision discourages overly optimistic thinking.

- Third, inclusion of an annual renewal clause allows both parties to the agreement to examine the contract and submit changes as appropriate. New products may be added. Territories and rates of commission may be adjusted. Problematic wording in the agreement may be polished. The annual renewal clause operates like a safety valve so that small problems don't grow over long periods of time into insurmountable problems.

- Fourth, taking legal action is less likely when an annual renewal provision exists. Both parties must acknowledge in advance that the agreement may truncate at the end of the year. Taking a partner for granted is less likely when it's known that there is a definite probability, however low, that the contract may terminate at the end of the year.

- Fifth, customers are a vehicle in which suppliers and representatives make investment.

When annual renewal provisions are included and termination becomes inevitable, both parties spend the final days of an agreement focusing on customers and their respective businesses; not on a legal squabble. This is a benefit to both the supplier and the rep.

With no annual provision and a resulting legal tussle, goodwill with customers is reduced. With the annual renewal position, goodwill is preserved and not diminished.

Conclusion

Inclusion of an annual renewal clause into a representative agreement can reduce or eliminate the likelihood of a costly legal dispute. Absent such a dispute, a supplier and manufacturers' representative can apply greater resources toward advancing their particular business objectives. □

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