

Distribution Contracts: Content, Strategy & Negotiation

By Candace L. Moon, The Craft Beer Attorney & Laura Lodge, Distribution Insight

Distribution Contracts require both an eye to strategy and legal structure/protections. This presentation is intended to showcase the importance of both while emphasizing the diversity in the industry; no one size fits all solutions exist. Please note that this is not to be construed as legal advice.

Fundamental differences between Traditional Distributors, MegaDistributors, and Brand Collectors include their intent to actively sell your products and grow your brand in coordination with you. Read your contract carefully and talk to retailers to understand the reality of each business structure and their goals.

Presentation psychological takeaway: Distribution is a partnership between the brewery and the distribution company. Legal takeaway: Know the laws of the state you are dealing with.

Trademarks and legal due diligence become more critical when entering a distribution contract. This can include your company name, the name for each of your individual products, your tagline, and other items.

It is critical and essential to have a contract between distribution partners to outline the fundamental understanding between parties. Trial periods are a bad idea always (lots of reasons, legal and strategically), and distribution contracts are always negotiable. Do NOT sign a generic form created by the other party.

The 3 most important elements of a contract are a termination agreement (defining 'cause'), understanding and navigating your state's franchise laws, and setting a valuation formula for the brand. Other key and often problematic areas include Master Distributor contracts (the right to distribute your beer is being given to other distributors by this one), transfer of distribution rights (they can assign someone else the right to distribute your beer without your permission), what happens in the case of the sale of the distribution company, and agreeing about what would happen if you sold or closed your brewery.

When negotiating a distribution contract, know your ability and goals. Consider the following:

- ◆ Product quantity
- ◆ Rollout approach
- ◆ Seasonal products
- ◆ Limited release products/allocations
- ◆ Minimum orders
- ◆ Flexibility of order structure
- ◆ Completely new product lines

Items that you could consider including in an Addendum:

- ◆ Product list
- ◆ First option on new products?
- ◆ Territory by county

Three important items to specify in your contract include measurable performance (define it), goal setting (with a starting point), and reporting (what kind and how often).

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When negotiating payment, be sure to be specific in your contract with regard to payment terms, manner of payment, and how much flexibility you are comfortable building into the contract. Too much flexibility can compromise your ability to claim that the other party is violating the contract.

Other financial considerations to negotiate and include in your contract include, but are not limited to:

- ◆ Cost of product
- ◆ Freight (FOB)
- ◆ Breakage in transit
- ◆ Keg Deposits/Credits
- ◆ Pallet Deposits/Credits
- ◆ Samples
- ◆ Promotional/Marketing billing
- ◆ Same payment terms?

Both parties will also benefit from agreements being made with regard to dating your product, how expired product in the market will be handled, how expired product in the distributor's warehouse will be handled, and the disposal of expired product.

Be specific about the storage of your cases and kegs both in the warehouse and in the retailer's store (Always refrigerated? Are floor stacks ok?). Also be specific about your expectations of refrigeration from brewery to distributor and distributor to retailer.

You need to include content about expectations and agreement with regard to sales and marketing support as well. You want to specifically discuss and include the following topics in your contract:

- ◆ Growing your brand
- ◆ Sampling the retailers on your product
- ◆ Feet on the street from the distillery
- ◆ POS (point of sale) items
- ◆ Promotions/Frequency of focus
- ◆ Samples



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Candace L. Moon is a San Diego-based attorney who has spent the last eleven years dedicating her law practice to the craft beer industry. She has worked with over 450 craft breweries and craft breweries-in-planning nationwide, handling many different legal areas including alcoholic beverage law, contract review and trademark law.



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