

Act on Commercial Representatives and Salesmen

(417/1992)

Chapter 1— **General provisions**

Section 1

In this Act a *commercial representative* shall mean an entrepreneur who, in a *representation contract* concluded with another, the *principal*, has undertaken continuously to promote the sale or purchase of goods on behalf of the principal by obtaining offers for the principal or by concluding sales or purchase contracts in the name of the principal.

Section 2

- (1) With the exceptions mentioned below, the provisions of this Act shall apply only unless otherwise provided in the contract, in the practice adopted by the parties or the trade, or in other usage which is to be deemed binding on the parties. The provisions below on the non-binding force of a contract term shall correspondingly apply to the practice adopted by the parties or the trade or to the other usage.
- (2) A provision in an Act which, under this Act, cannot be derogated by agreement to the detriment of the commercial representative, can neither be derogated to his detriment by an agreement according to which foreign law is to be applied to the legal relationship between the commercial representative and the principal if the relationship should otherwise be governed by this Act.

Section 3

- (1) At the request of either party, a representation contract and any amendments thereto shall be concluded in writing.
- (2) A contract term restricting a right belonging to a party under paragraph (1) shall be null and void.

Section 4

The adjustment of an unfair term in a representation contract shall be governed by the provisions of the Contracts Act (228/1929).

Chapter 2— **Relationship between commercial representative and principal**

Rights and obligations arising from the representation contract

Section 5

- (1) In performing his activities, a commercial representative shall look after the interests of the principal, act dutifully and in good faith towards him as well as comply with any reasonable instructions given by the principal.
- (2) A commercial representative shall be liable to inform the principal of any circumstances that may be of relevance in the performance of the activities entrusted to him. In particular, he shall without undue delay inform his principal of any offers which the principal might accept as well as of the contracts that he has concluded in the name of the principal.
- (3) A contract term which derogates the provisions of this section shall be null and void.

Section 6

A commercial representative may accept tasks referred to in section 1 also from other persons besides the principal unless this is contrary to the obligation of the commercial representative under section 5(1).

Section 7

During the period of validity of the representation contract and also after its termination, a commercial representative shall not make use of or disclose to third parties business secrets or professional secrets of the principal which have been entrusted to him or which he otherwise has obtained, if, by doing so, he would be acting in violation of good business practice.

Section 8

- (1) A principal shall act dutifully and in good faith towards the commercial representative.
- (2) A principal shall provide the commercial representative with all the information necessary for the performance of his activities and provide him with the necessary material, such as samples, models, specifications and price-lists.
- (3) A principal shall be liable to inform the commercial representative of circumstances that may be of relevance in the performance of the activities entrusted to the representative. He shall also, without undue delay, inform the commercial representative of his acceptance or refusal of an offer sent to him by the commercial representative or of a contract concluded in his name by the commercial representative without the right to do so. The principal shall, without undue delay, inform the com-

mercial representative of any non-execution of a contract procured or concluded by the commercial representative.

- (4) A principal shall, without undue delay, inform the commercial representative if he anticipates that the volume of the transactions referred to in the representation contract will be significantly lower than what the commercial representative can reasonably expect.
- (5) A contract term which derogates the provisions of this section shall be null and void.

Section 9

- (1) If a principal or a commercial representative has acted in violation of the representation contract or otherwise wilfully or through negligence failed to fulfil an obligation laid down in this Act or in the contract, he shall be liable to compensate the other party for any damage so incurred.
- (2) The party that intends to claim compensation on a basis referred to in paragraph (1), shall, after learning about the basis, without undue delay inform the other party of his intention. Failure to do so shall result in forfeiture of the right to compensation.
- (3) The provisions of paragraph (2) shall not apply to situations where a party has acted in bad faith or caused the other party substantial damage through gross negligence.

Section 10

A commercial representative shall be entitled to a commission on a transaction concluded during the period of validity of the representation contract where the transaction has been concluded as a result of his action or with a third party whom the commercial representative has previously acquired as a client for the principal for transactions of the same kind or, if the commercial representative has been entrusted with a specific geographical area or group of clients, the transaction has been concluded with a third party belonging to that area or group of clients.

Section 11

- (1) A commercial representative shall be entitled to a commission on a transaction concluded after the termination of the representation contract if the transaction has been concluded in the manner referred in section 10 and the offer of the third party reached the principal or the commercial representative before the termination of the representation contract or if the transaction can be deemed mainly attributable to the contribution of the commercial representative during the period of validity of the representation contract and the transaction was concluded within a reasonable period after the termination of the representation contract.
- (2) A new commercial representative following a previous commercial representative shall not be entitled to a commission under section 10 if the commission, pursuant to paragraph (1) of this

section, is payable to the previous commercial representative, unless it is equitable, under the circumstances, for the commission to be shared between the commercial representatives.

Section 12

- (1) A commercial representative shall be entitled to a commission as soon as and to the extent that one of the following conditions is fulfilled:
 - (1) the principal has fulfilled his performance obligation based on the transaction concluded between him and the third party;
 - (2) the principal should have fulfilled his performance obligation referred to in subparagraph (1);
 - (3) the third party has fulfilled his performance obligation based on the transaction referred to in subparagraph (1).
- (2) A contract term under which the right to commission is to arise later than at the time when the third party has fulfilled his performance obligation, or should have done so if the principal had fulfilled his performance obligation in accordance with the transaction, shall not be binding on the commercial representative.

Section 13

- (1) If the principal has agreed with the third party on the cancellation of a transaction or an amendment of its terms without the consent of the commercial representative and if all or part of the performance obligation of the third party is therefore not to be fulfilled, the non-fulfilment of the performance obligation shall not affect the right of the commercial representative to a commission.
- (2) A commercial representative shall forfeit his right to a commission under section 12 only if the transaction between the principal and the third party has not been executed and the non-execution is not attributable to the principal or to any circumstance dependent on him or to a reason referred to in paragraph (1) and if it is evident that the performance obligation will not be fulfilled later, either.
- (3) If the third party fulfils his performance obligation in part only, the commercial representative shall be entitled to a commission only to the extent that the performance obligation is fulfilled unless otherwise provided in paragraph (1) or (2).
- (4) An advance waiver by the commercial representative of his right to a commission under this section shall not be binding on the representative.

Section 14

- (1) A commission shall be paid to the commercial representative within one month from the end of the calendar month during which the right to the commission arose under section 12. If the commercial representative has forfeited all or part of his right to a commission under section 13(2) or (3), any excess amount paid shall be refunded to the principal on demand.
- (2) A contract term under which the commission shall be paid to the commercial representative later than within one month from the end of the calendar quarter during which the right to commission arose, shall not be binding on the commercial representative.

Section 15

- (1) In the absence of any agreement on the amount of the commission payable to the commercial representative, the commission shall be determined on the basis of the remuneration customarily paid for the execution of the same or corresponding activities in the place where the commercial representative operates. If the amount of the commission cannot be thus determined, the commercial representative shall be entitled to a commission that is reasonable under the circumstances.
- (2) The commission shall be calculated from the purchase price payable by the buyer. Any cash discount shall, however, not be deducted from the purchase price, nor shall freight, packaging, customs duty, insurance premium, tax or other such additional cost be deducted, unless this cost has been separately itemized in the invoice sent to the buyer in accordance with the transaction concluded with him.

Section 16

- (1) When the collection of payments has been entrusted to a commercial representative, he shall keep the funds he has received apart from other funds. The commercial representative shall be entitled to a separate reasonable remuneration for the collection of payments unless the commission of the commercial representative is intended to include a remuneration for this task as well.
- (2) The remuneration payable to the commercial representative under paragraph (1) shall be paid when the payment has been collected.

Section 17

- (1) If a commercial representative undertakes liability towards the principal for a third party executing his obligations under a transaction (*del credere*), the undertaking shall be made in writing to be valid. The undertaking may relate only to a particular transaction or to transactions concluded with a particular third party. The commercial representative shall be liable for such obligation as for his own debt.
- (2) The commercial representative shall be entitled to a reasonable remuneration for the undertaking of

liability referred to in paragraph (1).

- (3) The remuneration payable to the commercial representative under paragraph (2) shall be paid when the transaction with the third party has been concluded.

Section 18

A commercial representative shall be entitled to a special compensation for costs incurred by measures necessary for the proper execution of the representation contract. No compensation shall, however, be payable if the costs are incurred as the result of the customary activities of the commercial representative.

Section 19

- (1) A commercial representative shall be entitled to receive from the principal a monthly statement on the transactions that entitle him to a commission under section 10 or 11.
- (2) The commission statement shall list, for the previous month, the transactions entitling the commercial representative to a commission under section 12. For each transaction, the statement shall indicate the commission due to the commercial representative or, if he is not credited with a commission, the reason therefor.
- (3) Should circumstances appearing after the issue of the commission statement indicate that the commercial representative has, in full or in part, forfeited his right to a commission for a transaction listed in the statement, the principal may credit himself with the said commission in a later statement.
- (4) A waiver by the commercial representative of his right under paragraph (1) or (2) shall not be binding on the representative. However, the parties may agree that the commission statement is to be issued to the commercial representative within one month of the end of the calendar quarter during which the commission became due.

Section 20

- (1) The commercial representative shall be entitled to receive from the principal an extract from the books of the principal and all the other information which is available to the principal and which the representative needs in order to verify the commission statement.
- (2) Should the principal refuse to give the information referred to in paragraph (1) or should there be justified reason to suspect that the statement or the information given is incomplete or false, an auditor authorized by the Central Chamber of Commerce or a local chamber of commerce and named by the commercial representative shall have the right to audit the books of the principal to the extent necessary to ascertain the right of the commercial representative to a commission.

- (3) A contract term restricting the right of the commercial representative under this section shall be null and void.

Section 21

Should the collection of a receivable of the commercial representative based on the representation relationship otherwise be jeopardized, the commercial representative shall be entitled to retain possession of any documents, samples, models and goods whose possession he has acquired because of his activity, as well as anything that he has collected from a third party under authorization of the principal, until the principal has paid the receivable of the commercial representative or given a security for its payment.

Termination of a representation contract

Section 22

- (1) A representation contract concluded for a fixed period shall be terminated upon the expiry of the period agreed upon. If the contract, under a term incorporated therein, is to be terminated only by notice given before the expiry of the contract period, the contract shall at the end of the contract period, unless notice is given, be deemed valid for the time being.
- (2) If the parties of a representation contract concluded for a fixed period, after the expiry of the said period, continue the representation relationship without an express contract, the contract shall be deemed converted to be valid for the time being.

Section 23

- (1) A representation contract which is valid for the time being may be terminated by either party by notice. If notice is given during the first year of the contract, the period of notice shall be one month. Thereafter the period of notice shall be extended by one month for each beginning year of contract. The period of notice shall, however, not exceed six months.
- (2) An advance agreement of the parties on a shorter period of notice than that provided for in paragraph (1) shall not be binding. The parties may, however, agree that the period of notice to be observed by the commercial representative is to be three months even if the representation contract has been in force for more than three years.
- (3) If the parties agree upon a period of notice that is longer than that provided for in paragraph (1), an agreement under which the period of notice to be observed by the principal is shorter than that to be observed by the commercial representative shall not be binding on the commercial representative.

- (4) The period of notice shall be counted from the end of the calendar month during which notice is given to the other party.

Section 24

If the assets of the principal or commercial representative are surrendered into bankruptcy, the representation contract shall be deemed expired on the date when the bankruptcy application was submitted to a court.

Section 25

- (1) Without prejudice to the provisions in force on the periods of validity and notice of a representation contract, a party shall be entitled, for an important reason, to cancel the contract with immediate effect. An omission or act of a party which would make it unreasonable to require that the other party continue the contract relationship shall be deemed to constitute such reason.
- (2) Unless to be deemed otherwise under the circumstances, a party may, in particular, cancel a representation contract in the following cases:
 - (1) upon the conclusion of the representation contract, the other party has deceived the party in an essential issue;
 - (2) the other party refuses to agree to the demand of the party to conclude the contract in writing under section 3;
 - (3) the other party is guilty of action by which he has severely violated the interests of the party or which otherwise results in a justified loss of his trust in the other party; or
 - (4) the other party has failed, in an essential issue, to fulfil his obligations under the representation contract.
- (3) The right of a party to cancel the representation contract under this section shall expire unless he exercises the right without undue delay after learning of the basis for cancellation or, if the basis is continuous, of its termination.

Section 26

- (1) In the absence of a basis for cancellation laid down in section 25, a party shall, nevertheless, be entitled to terminate the contract prematurely, but he shall be liable to compensate the other party for any damage incurred thereby.
- (2) A waiver by commercial representative of his right to compensation under paragraph (1) made before the termination of the representation contract shall not be binding on the representative.

Section 27

If the cancellation of a representation contract referred to in section 25 has been due to wilful or negligent acts by a party or if the contract has expired due to the bankruptcy of a party, the other party shall be entitled to compensation for any damage incurred by the premature termination of the contract.

Section 28

- (1) Upon the termination of a representation contract, the commercial representative shall be entitled to an indemnity from the principal, if and to the extent that:
 - (1) the commercial representative has brought the principal new clients or significantly increased the volume of business with existing clients and the principal continues to gain substantial profit from business with such clients; and
 - (2) the payment of the indemnity can be deemed equitable having regard to the commission lost by the commercial representative on the transactions with such clients and to all other relevant circumstances.
- (2) The commercial representative shall be entitled to an indemnity that does not exceed a figure equivalent to the remuneration of the commercial representative for one year calculated from the average annual remuneration over the preceding five years. If the representation contract has been in force for less than five years, the average remuneration shall be calculated from the total remuneration paid during the contract period.
- (3) If the representation contract is terminated due to the death or bankruptcy of the commercial representative, the indemnity payable under paragraphs (1) and (2) shall be paid to his decedent's estate or bankruptcy estate.
- (4) The payment of the indemnity shall not prevent the commercial representative or his decedent's estate or bankruptcy estate from claiming damages for breach of contract.
- (5) A contract term concluded before the termination of a representation contract and restricting the right to an indemnity under this section shall be null and void.

Section 29

- (1) The commercial representative shall not be entitled to an indemnity, if:
 - (1) the principal has terminated or cancelled the contract due to an omission or act of the commercial representative referred to in section 25;
 - (2) the commercial representative has terminated or cancelled the contract; or
 - (3) the commercial representative, with the consent of the principal, has assigned his rights and duties under the representation contract to another person.

- (2) Without prejudice to the provisions of paragraph (1)(2), the commercial representative shall be entitled to an indemnity when he terminated or cancelled the contract if the termination or cancellation was justified under circumstances attributable to the principal or if the commercial representative could not reasonably be required to continue his activities because of age, infirmity or illness.
- (3) The commercial representative shall forfeit his right to an indemnity unless he notifies the principal within one year of the termination of the representation contract that he claims the indemnity.
- (4) A contract term concluded before the termination of a representation contract and restricting the rights of the commercial representative under this section shall be null and void.

Section 30

Where a representation contract has been terminated through notice, bankruptcy, cancellation or other reason, the commercial representative shall be liable to undertake any measures necessary to safeguard the principal or his estate from damage until the principal, his guardian or successor or the trustees of his bankruptcy estate can look after the interests of the principal or his estate, unless this causes the representative considerable costs or inconvenience.

Section 31

- (1) An agreement restricting the activities of a commercial representative following the termination of the representation contract shall be valid only to the extent that:
 - (1) it has been concluded in writing;
 - (2) it relates to the geographical area or the group of clients entrusted to the commercial representative; and
 - (3) it relates to the kind of goods covered by the representation contract.
- (2) A contract term under which an agreement referred to in paragraph (1) shall be valid for more than two years after the termination of the representation contract shall not be binding on the commercial representative for a period exceeding two years.

Chapter 3— **Competence of the commercial representative and the relation of the principal to a third party**

Section 32

- (1) A commercial representative may conclude agreements on behalf of the principal only under specific authorization.
- (2) If the principal has given the commercial representative forms which bear the name of the principal

and which, after their completion by the commercial representative, can be deemed to be intended as proof of an agreement concluded on behalf of the principal, an agreement concluded on a form completed by the commercial representative shall be binding on the principal as if he had expressly authorized the representative to conclude the agreement.

Section 33

If the commercial representative has concluded an agreement with a third party without authorization or exceeding his competence, the principal shall, if he does not want to accept the agreement, notify the third party thereof without undue delay after learning about the agreement. If the principal fails to do so, he shall be deemed to have accepted the agreement.

Section 34

- (1) If the principal does not want to accept an offer received by the commercial representative, he shall, without undue delay after receiving the offer or after learning of the contents of the offer, notify the offeror thereof. If the principal fails to do so, he shall be deemed to have accepted the offer.
- (2) The provisions of paragraph (1) shall not apply where otherwise agreed upon by the commercial representative and the offeror.

Section 35

- (1) If a third party has made an offer to the commercial representative and the representative has forwarded the offer to the principal, the offeror shall have the same right to notify the principal of the revocation of the offer as he would have had if he had sent the offer himself.
- (2) The provisions of paragraph (1) shall not apply where otherwise agreed upon by the commercial representative and the offeror.

Section 36

- (1) If an entrepreneur has been negotiating with a commercial representative about a purchase or sale to be made on behalf of his business and he receives a notice from the principal of the representative whereby the principal, with reference to the negotiations, notifies him that the principal accepts the offer made to the commercial representative or confirms a contract concluded with the representative, and the entrepreneur wants to invoke the fact that he has not made any offer or that the contents of the offer or contract have been misrepresented in the notice, he shall notify the principal thereof without undue delay. If the entrepreneur fails to do so, he shall be deemed to have accepted a contract with the contents indicated in the notice.
- (2) The provisions of paragraph (1) shall not apply where the principal knew or should have known that

the offer or contract reported in the notice had not been made or that the contents of the offer or contract had been misrepresented nor where the entrepreneur can prove that the notice was erroneous.

Section 37

- (1) Even if the commercial representative is competent to conclude contracts binding on the principal, he shall not be entitled to collect payment for the goods sold, or, after the conclusion of the contract, to grant an extension for payment or a price discount, or otherwise to alter the contract.
- (2) Where a contract has been concluded through the contribution of the commercial representative or in a geographical area or among a group of clients entrusted to the commercial representative in the manner referred to in section 10 and the principal learns that the commercial representative has undertaken a measure referred to in paragraph (1) without proper authorization, he shall notify the third party without undue delay if he does not want to accept the measure. If the principal fails to do so, he shall be deemed to have accepted the measure.

Section 38

Where a contract has been concluded through the contribution of the commercial representative or in a geographical area or among a group of clients entrusted to the commercial representative in the manner referred to in section 10, the commercial representative may, on behalf of the principal, receive a notice relating to a defect or deficiency in the goods or a delay in their delivery as well as any other notice relating to the execution of the contract. However, the commercial representative shall not, without an authorization of the principal, be entitled to make decisions regarding such notice even if he were entitled to conclude contracts binding on the principal.

Chapter 4— **Salesmen**

Section 39

In this Act, a *salesman* shall mean an employee who, under a representation contract concluded with the employer, has undertaken, on behalf of the employer, to promote the sale of goods in the manner referred to in section 1 by travelling from place to place or by visiting clients at the place where the business of the employer is located. A salesman does not carry the goods to be sold with him.

Section 40

The legal relationship between a salesman and the employer shall be governed by the Employment Contracts Act (320/1970) unless otherwise provided for in this Act.

Section 41

A salesman and his employer shall, where appropriate, be governed by the provisions of sections 2—4, 7, 8(1)—(4), 32—38, 44 and 45.

Section 42

- (1) If all or part of the remuneration of a salesman is paid in the form of a commission, the provisions of sections 10, 11, 12(1), 13(1), 15, 19(1)—(2) as well as 20(1) and 20(3) shall apply, where appropriate.
- (2) A waiver by a salesman of his right to a commission under section 11(1), for a transaction whose offer has reached the principal after the termination of the representation contract, shall not be binding on the salesman if the waiver was made before the termination of the representation contract.

Section 43

A salesman shall be entitled to a specific compensation for his travelling, postal, telegraph, telephone and other comparable expenses as well as to a daily allowance when travelling. Upon the request of the salesman, the employer shall be liable to pay the salesman an advance necessary for his expenses and travel allowance.

Chapter 5— **Miscellaneous provisions**

Section 44

Where notice to be given by the commercial representative under section 9(2) or 29(3), or by the principal under section 9(2), 33, 34(1) or 37(2), or by an entrepreneur under section 36(1), has been appropriately dispatched, the person giving notice may invoke the notice even if the notice is delayed or distorted, or fails to reach the addressee.

Section 45

- (1) This Act shall enter into force on 1 November 1992. It shall repeal the Act on Commercial Representatives (389/1975) as later amended.

- (2) Representation contracts concluded before the entry into force of this Act shall be governed by this Act from 1 January 1994. Until that date they shall be governed by the previous provisions unless otherwise agreed upon.