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Exclusive distributor in Asia: the five clauses export departments regret not negotiating

An exclusive distributor is often the fastest way into an Asian market, and the hardest relationship to leave. Most disputes trace back to five clauses signed in a hurry, usually because the distributor's template was accepted as the starting point.

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1. Territory: define it down to the channel

"Greater China" is not a legal territory. It may or may not include Hong Kong, Macau and Taiwan, and it says nothing about channels. Define the territory as a list of jurisdictions, then define exclusivity by channel: physical retail, wholesale, domestic e-commerce, cross-border e-commerce, travel retail and domestic duty-free. A brand that grants country-wide exclusivity across every channel often finds it cannot open a Tmall Global store or a Hainan duty-free listing without the distributor's consent.

Keep three carve-outs by default: your own direct-to-consumer site, cross-border e-commerce, and global key accounts such as airport retailers that buy centrally.

2. Performance: tie exclusivity to results

Exclusivity is a reward for performance, not a welcome gift. Set annual minimum purchases in value, with a realistic ramp-up over the first two or three years, and add a marketing commitment expressed as a percentage of purchases, with proof of spend.

The remedy matters as much as the target. Termination is a blunt instrument. The more useful consequence of a missed minimum is that the distributor loses exclusivity and you may appoint others. That clause is far easier to enforce, and in Japan it can avoid a dispute over termination altogether.

Measure sell-out, not only sell-in. Require monthly sell-out and stock reports by SKU and by account. Without them, minimums can be met by loading stock into the market, stock that later resurfaces at a discount in the grey market and undermines your pricing everywhere else.

3. Exit: price the end on day one

In Japan, distribution agreements are governed mainly by the Civil Code and by good-faith principles [1]. Courts have developed a doctrine of long-term continuous contracts: where a distributor has made reasonable investments, the brand as the supplier may not end the relationship without a notice period long enough to recover them, or reasonable compensation [2]. There is no statutory minimum notice. Courts weigh the length of the relationship, the distributor's investments and dependence, and whether compensation was offered; practitioners suggest planning six to twelve months' notice for relationships longer than five years [3].

Write the exit into the contract: a notice formula linked to the length of the relationship, a buy-back of saleable stock at landed cost, the transfer of registrations and marketplace accounts, and a cooperation clause for the transition period. Paying a known amount at the end costs less than litigating an unknown one.

4. Brand ownership: file first, then sign

China applies a first-to-file trademark system [4]. A distributor that registers your trademark first can become its legal owner in China. Article 15 of the Trademark Law lets a principal oppose or invalidate a registration filed without authorisation by its agent or representative, and it has been applied to distributors and their related parties [5][4]. But it is a remedy, which means evidence, time and cost.

The sequence that works: register your trademarks in China, including the Chinese-character version you intend to use, before you share any business plan. Then state in the contract that all brand IP belongs to you, that the distributor will not file any related trademark, domain name or social media account, and that it will transfer anything it may hold on termination. Apply the same logic to regulatory registrations and marketplace stores held in the distributor's name, such as cosmetics filings or a Tmall flagship store.

5. Price: control without fixing

Resale price maintenance is the clause most likely to cause trouble in China. In 2013 the regulator fined two leading baijiu (Chinese grain spirit) makers a combined RMB 449 million for imposing minimum resale prices on their distributors [6]. The 2022 amendment to the Anti-Monopoly Law lets a supplier avoid liability if it proves the arrangement on prices does not restrict competition [7].

Since 1st February 2026, SAMR's amended provisions add a safe harbour for resale price maintenance where each party's market share is below 5% and the combined annual turnover of the products concerned is below RMB 100 million. For non-price restraints such as territorial restrictions, the threshold is a 15% market share. The safe harbour is not absolute immunity, and in private litigation the defendant must prove that a price restraint does not harm competition [8].

A small foreign brand may usually fit within these thresholds. It should still not rely on a contractual price floor. Use recommended retail prices, keep the price corridor between Hong Kong, Mainland China and Japan coherent through your own wholesale price list, and manage discounting through marketing approvals rather than price clauses.

Before you sign

Three further points deserve a line each in the contract: the governing law and seat of arbitration, with Hong Kong a common neutral choice for Asia; the currency and payment security, with prepayment or a letter of credit until trust is established; and a first term short enough to renegotiate, typically three years with renewal linked to performance.

> **THE FIRST EDIT ASIA VIEW**
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> *An exclusive distributor is a joint venture without the shares. Negotiate it like one: grant exclusivity in exchange for measurable commitments, keep every brand asset in your own name, and agree the cost of separation while both sides still want the deal. The best time to write the exit clause is when nobody expects to use it.*

Sources

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