

This document focuses on agents and distributors – the forms of in-market representative used by 90 percent of new exporters. It highlights the differences between agents and distributors, how to select the best representative for you and your product, what sort of agreement to enter into with your representative, and how to build a positive win-win partnership.

Agent and distributor selection

a how to guide

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Is this guide for you?

This guide is designed for small- to medium-sized businesses that are exporting and need practical advice about finding the best type of representative for their product in the market. It compares the two major types of representative – agent and distributor – and takes you step-by-step through the advantages and disadvantages of each, and how to select the best partner to represent your product or service. This guide covers:

- the benefits of strong in-market representation
- potential advantages and disadvantages of agents and distributors
- the types of written agreements you could enter into with a representative
- a useful checklist to follow when negotiating an agent/distributor agreement

The information provided in this guide is quite specific in nature; if you find this document useful, you might want to look at other NZTE guides that explore related areas of exporting in more depth, at www.nzte.govt.nz/develop-knowledge-and-expertise.

Benefits of strong in-market representation

Strong in-market representation is often critical to export success. In addition to dealing directly with your clients and helping you to grow your export sales, a good representative is your partner and can provide you with a number of benefits. The benefits of strong in-market representation include:

- dealing directly with your clients in helping grow your export sales
- access to local knowledge
- on-going market intelligence about competitors and trends
- a watch-dog who can identify people infringing on your trade mark/patents
- someone to assist with local rules and regulations e.g. special labelling requirements
- in-market customer support for queries, support and warranty
- usually have an established network of retailers and/or wholesalers, saving you market development costs and time

Agents and distributors

Exporters can choose between two types of in-market representation: an **agent**, who is a representative of the exporter; or a **distributor**, who is a customer of the exporter. Your choice between an agent and a distributor will depend on the market size, the type of product and the degree of control you want to exercise or are able to exercise in the market. Key differences between these two types of representation are briefly explained below:

Key differences between agents and distributors

Agent	Distributor
<ul style="list-style-type: none"> ■ A representative of the exporter 	<ul style="list-style-type: none"> ■ A customer of the exporter
<ul style="list-style-type: none"> ■ Not financially involved in sale – the agent does not purchase the product from you. 	<ul style="list-style-type: none"> ■ Buys for own account, i.e. the distributor purchases the produce from you and then on-sells to customers
<ul style="list-style-type: none"> ■ Involved in facilitating import if required 	<ul style="list-style-type: none"> ■ Imports the product
<ul style="list-style-type: none"> ■ The agent works for you and is paid by you in an agreed way – normally sales' commission. Payment is usually made following delivery of the good and after you have been paid. 	<ul style="list-style-type: none"> ■ Marks up supply price to cover additional in-market costs of ownership, distribution and invoicing/debt recovery
<ul style="list-style-type: none"> ■ Customer ownership is technically yours, but many well-established agents have their own customer base, and some wholesalers may only buy through a certain agent 	<ul style="list-style-type: none"> ■ The distributor has a strong relationship with customers in the retail/wholesale field.
<ul style="list-style-type: none"> ■ Not normally responsible for after sales service 	<ul style="list-style-type: none"> ■ Responsible for after sales service and in some cases warranty and guarantee issues
<ul style="list-style-type: none"> ■ Distribution not normally the responsibility of the agent. You are responsible for distribution costs incurred by your agent 	<ul style="list-style-type: none"> ■ Distribution responsibility
<ul style="list-style-type: none"> ■ Unlikely to be involved in funding promotional activity though in some markets, e.g. the USA. Agents are actively involved in introducing new products to customers 	<ul style="list-style-type: none"> ■ Helps pay for and undertakes promotion and marketing of your product/service in the marketplace
<ul style="list-style-type: none"> ■ Will not usually have name and contact on exporter's promotional support material 	<ul style="list-style-type: none"> ■ Usually has name and contact details on exporter's promotional support material
<ul style="list-style-type: none"> ■ No control of resale price 	<ul style="list-style-type: none"> ■ Controls selling price
<ul style="list-style-type: none"> ■ Does not accept credit risk for principal 	<ul style="list-style-type: none"> ■ Accepts credit risk of buyers
<ul style="list-style-type: none"> ■ In large markets such as the USA, separate agents may be required for different states, territories or regions 	<ul style="list-style-type: none"> ■ In large markets such as the USA, separate distributors may be required to service different states, territories or regions
<ul style="list-style-type: none"> ■ Some markets are only served by agent, not distributors, so you have limited choice 	<ul style="list-style-type: none"> ■ Appointing a distributor may be the only option for certain products in certain markets
<ul style="list-style-type: none"> ■ Represents your company in the market and must do so to your best advantage 	<ul style="list-style-type: none"> ■ Usually the bigger the market the more links in the distribution chain, e.g. in Japan, your product could pass through an importer, a distributor, a wholesaler, and a retailer before it reaches the end user. In smaller export markets, a distributor will also act as an

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Agent	Distributor
	importer.
■ Exporter sells <i>through</i> an agent	■ Exporter sells <i>to</i> a distributor

Advantages & disadvantages of in-market representation

When choosing your in-market representative, you should be aware of the relative advantages and disadvantages offered by an agent or supplier. As a broad guide, selecting an agent allows an exporter to retain greater control of the product/service in the market, whereas a supplier often takes on more responsibility – and consequently carries more risk – for the selling process.

How much control you are comfortable handing over will be a crucial factor when deciding your preferred in-market representation.

Agent

Advantages of an agent	Disadvantages of an agent
<ul style="list-style-type: none"> ■ Agents have an important role in some markets with wholesalers – they are independent. ■ Agents can be important for exports of large, one-off items, e.g. machinery. ■ Agents can have very good market expertise, technical expertise and their own customer base. ■ An agent normally charges an agreed commission (around 7-15 percent, depending on the product and sector) on all sales - your selling costs are known in advance and can be built into your pricing. You normally pay an agent after the buyer has paid you. ■ Because you are responsible for all marketing and promotion you retain control over your branding. 	<ul style="list-style-type: none"> ■ The manufacturer bears the cost of all deliveries. ■ No stock is held in the market – you may need to supply a range of clients, which can result in a relatively complex distribution process. ■ The agent does not take responsibility for after-hours client service ■ The agent is unlikely to be involved in funding promotional activity and does not usually undertake marketing or promotion of your product, though this does vary according to the market. ■ You carry the credit risk on all transactions, but because you normally pay the agent after you have been paid, there is an incentive for the agent to follow up payment on your behalf

Supplier

Advantages of a supplier	Disadvantages of a supplier
<ul style="list-style-type: none"> ■ You've only got one customer (the distributor), who picks up the credit risk for all sales ■ The distributor holds your stock in-market ■ The distributor provides back-up service to clients ■ The distributor helps pay for and undertake marketing and promotion of your product in the market ■ The distributor develops a customer base for your product ■ A distributor handles more of the in-market work, saving you time and costs 	<ul style="list-style-type: none"> ■ You have no control over the selling process ■ The costs of selling through a distributor can force the product out of market competition, e.g. a distributor may add up to 50 percent mark-up (or even more) to your product prior to it reaching the retailer ■ You may not know who your customers are ■ Because a distributor shares responsibility for marketing and promotion, you may not retain total control over the branding of your product ■ The distributor is a wholesaler (rather than a specialised master distributor) they may not sell effectively as other wholesalers ■ May not have the sales force for new product introductions in larger markets ■ Your distributor may represent multiple products, so their attention and time may well be divided

Choosing the right partner for your product

Selecting the right partner to be your representative in-market is vital to your export success. Inappropriate partners and distribution structures can be very difficult to change once you are in the market.

The most crucial factor is that you and your representative must get on well. You need to be able to build a strong, positive relationship based on open two-way communication, a genuine liking for each other, and high levels of trust.

- To increase your chances of finding an appropriate representative for your company, we suggest you go through a research process.
- At least five or six candidates should be interviewed and assessed before an appointment is made.

- Sales-rights to your product are a valuable 'right' and should not be surrendered without a full analysis of the available options.

Appointing an agent or distributor

Personal contact is essential. After establishing a list of possible representatives (New Zealand Trade and Enterprise can help you do this), you need to visit the market to meet them and assess their various merits.

Some of the things to consider when appointing an agent or distributor include:

Trust and personal rapport

- Personal rapport is vital and is by far the most important factor when determining which representative to appoint. If there is no rapport between you, the relationship will not work, no matter how good the fit between their company and your product, and it would be foolhardy to proceed.
- Are they confident about your company, your product, and your chances for success?

Due diligence

- Are they financially sound? (A credit check should be carried out through their bank or use a credit-checking agency).
- Do they belong to a recognised association?
- How many employees do they have, in particular sales staff? Ideally, the size of their company should be similar or slightly larger than your company. There can be a clash of cultures between a corporate structure and a family owned business.
- Ask retailers, customers and other exporters to tell you about their representatives, and especially those with good reputations for professional service and support.
- Ensure representatives are not representing other product lines too similar to yours – avoid conflicts of interest and competing products.

Knowledge of the market

- Your chosen representative should have a thorough understanding of competitive products and prices to assist in product modification or advertising requirements/changes.
- Do they have a good network of representatives and/or contacts?
- How many years' experience do they have in your market sector? You may want a company that is established with a good network of contacts but that is not very flexible or open to change; or you may prefer to appoint a young, energetic company that is out to prove itself, is flexible and innovative but does not offer extensive experience or contacts.
- Do they have good knowledge of the local market? A good representative will assist you in your marketing programme and give you the benefit of his/her local market knowledge.

Sole or multiple agency?

- Ensure you fully canvass all options before appointing a sole agency – you want to get value for money. Most agents will want exclusivity: we recommend you consider a trial period and

advise the agent/distributor they may receive exclusivity of your product if they meet identified performance targets.

- In large markets such as the USA, use regional distributors (i.e. more than one) for the best market coverage.

A win-win relationship

As we know, building a robust, 'win-win' relationship with your agent/distributor requires a combination of trust, personal rapport, and clear two-way communication. The following list outlines some of the major success factors for growing an effective and profitable relationship:

Communication and support

- Your ideal representative is your partner in helping you achieve your export goals, so it's important to provide your representative with excellent ongoing support
- There is a much greater chance of the relationship being profitable and productive if there is good personal rapport between you and your representative.
- A representative will expect that you are committed to building up your export market and that therefore all orders will be treated as 'special' - no matter how small.
- Bring your representative to New Zealand to visit your premises, meet your staff and key industry contacts.
- Take cultural differences into account when communicating with your representative, e.g. representatives from some cultures may initially tell you what they think you want to hear.
- Your representative expects you to have a reasonable knowledge of the market into which you are selling - for many products or ranges this will require you – the exporter – to personally visit regularly and perhaps meet with customers or attend trade fairs.

Delivery and logistics

- In retail-driven markets specified delivery dates are extremely important. Many retailers will include a cancellation date on their orders. If there is a problem with a delivery date you should advise your representative as soon as possible and he/she may be able to change delivery times.
- Good communication is vital. Designate at least one person to deal promptly with inquiries, orders, etc. Your representative will expect that faxes and telephone calls are answered/attended to promptly. Some manufacturers in New Zealand have an international free call number which is appreciated by both their representatives and customers.

Marketing and pricing

- You should not be tempted to 'buy' business in order to gain a share of the market. While under-pricing your product may assist short term selling goals it will work against your product in the long term and put your business relationship with your representative under threat. At the beginning of your relationship discuss volume size and how you can build on that over time. Set up a pricing model.
- Your promotional strategy must support your distributor: for example, if you have a web site for direct sales, you should have an agreement with your representative whereby you will

either direct the web enquiries to your representative, or pay your representative the commission on the sale. If you don't have such an agreement in place, direct sales via your web site will undermine your relationship with your representative.

- Your web site should support your representative with reliable and consistent consumer and technical information. Some exporters extend their web site to enable a representative to access stock levels, make orders etc. If you export to more than one market, consider publishing information in different languages.

Four types of written agreements

There are various forms of agreement you can enter into with your international agent or distributor. These range from a simple handshake to establishing a formal joint venture.

In the majority of cases, New Zealand Trade and Enterprise recommends you enter into a Heads of Agreement or an Exchange of Letters with a new agent or distributor, and move towards entering into a joint venture agreement once the relationship is strongly established (this might not be for another ten years or so).

The more formal the relationship the more control you have in the marketplace, at the same time your time and financial commitment to the relationship must also increase.

There are four common types of exporter and agent/distributor agreements:

1. The 'hand-shake'

Many New Zealand exporters confirm their agent or distributor's appointment and the terms of their relationship on the strength of a handshake. New Zealand Trade and Enterprise does not recommend this approach. If there is no written document the relationship can run into difficulties in areas such as measuring performance, sorting out differences of opinion, or terminating the arrangement. It is important to have a written agreement that covers the key components of your relationship.

2. Heads of agreement/exchange of letters

In the majority of cases, a Heads of Agreement or Exchange of Letters is the best starting point in terms of an export and agent/distributor agreement. Such an agreement implies trust and a formal relationship and is a good mechanism to protect your interests. However, it does not involve the time and cost of working through lawyers.

The Heads of Agreement should include the following:

- Products involved – description
- Territory covered by the representative
- The timeframe of the agreement
- Termination clauses – it is important to think about these at the start of the relationship when you and your representative are on good terms.
- Review Clauses – when you want to review the agreement and what you want to review
- Performance targets – these could cover such things as amount of sales, number of customers, number of advertising campaigns etc.

3. Formal agent/distributor agreement

This is a formal agreement that requires the services of a lawyer, as well as considerable time and money on your behalf. Just as too many New Zealand exporters rely on the handshake agreement, too many also jump in at this stage.

Whilst the handshake is too flimsy, the formal agreement at the outset can be a waste of time and money if the relationship only lasts for a few months. It is usually better to start with a Heads of Agreement or Letters of Exchange and progress to this stage once the relationship has proved itself to be ongoing. Be aware, however, that formal agent/distributor agreements should not be seen as legally binding, except perhaps for Australia. It would normally be too expensive for a New Zealand company to sue an offshore partner who breaks such an agreement, despite its legal basis.

The key advantage of a formal agreement is that it is a written statement of intent that ensures everyone understands the rules and is working to the same objectives.

A checklist of items that should be included in an agent/distributor agreement can be found at the end of this document.

4. Joint venture

Once you have an established and successful relationship with your representative, you could consider entering into a joint venture with them. This is a public show of your commitment to each other and sends good market signals. NZTE's website (www.nzte.govt.nz) has more information on joint ventures.

Measure your agent or distributor's performance

While your sales figures and trends will give you a good indication of how well your product and your distributor or agent is performing, it makes good sense to have a more formal performance arrangement in place so you can quickly and easily identify areas for attention.

- Request regular reports on a monthly, quarterly and annual basis. These reports should cover such things as sales, inventory after-sales service, distribution and warehousing, freight, competitor activity, new products, consumer and audience trends.
- Regular visits to the market should be part of a performance review.
- Encourage open, two-way communication so problems can be highlighted and dealt with quickly and constructively.
- Talk to customers to find out how they think your representative is performing.
- Use your time in the market to ascertain how quickly and accurately your representative is reporting back market trends.

Other options for market representation

Own company

This method, while giving a manufacturer the most control over product is also the most expensive channel into the market. It is not a method usually considered by new exporters. Costs will include the set up of a local company which must comply with local regulations.

Costs such as salaries for employees, wage-add on costs (e.g. superannuation), ACC-equivalent premiums, healthcare, leave loadings, vehicle expenses etc. will be incurred. In addition, given the size of many of New Zealand's export markets, it is unlikely that the whole market could be adequately serviced through one office.

Direct selling

Exporters are increasingly taking more responsibility for what happens to their products in-market. They can retain more control when access to clients or buyers is direct, and servicing of the contract can be done from New Zealand. More direct control is also being made possible with the widening use of direct mail, mail order and Internet selling – e-business – where orders are received directly in New Zealand. Delivery can also be done directly from New Zealand or coordinated from New Zealand.

This option is obviously an advantage to a manufacturer in that it cuts out any 'middleman'. However, to sell on this basis you would normally have to have a highly desired product, frequent visits to the market and have in place excellent communication channels.

Franchising

Franchising is a form of licensing that markets product and 'know-how' together, in a way that is attractive to others as an investment. For a franchise to work internationally, you should have your product or concept working well in New Zealand. When you sell the concept, you have set standards to ensure consistency of the product, service delivery, branding and marketing.

A franchise allows a rapid internationalisation of your product, as the capital costs are normally borne by the Franchisee. You will normally have a much closer relationship with the "retailer" by this method of in-market representation, depending on how the franchise is established.

There are many examples of franchised businesses in New Zealand, perhaps the most well known example being McDonalds™. Most countries have industry or other codes about how franchises can be promoted and contracted, as well as the safeguards that apply to franchise agreements.

NZTE produces a Guide to Franchising in Australia which is on our website (www.nzte.govt.nz) that provides background information on the Australian franchise market, and sets out the practical steps to establishing your own franchise operation in Australia.

Royalty

This method of distribution is usually entered into when the developer of a product or component does not have the capital, time or commitment to manufacture and market the product/component themselves. You effectively sell your intellectual property to someone else to manufacture on your behalf, or to incorporate into a product they are already manufacturing. You then receive an agreed amount - a royalty - every time they make a sale.

This method is often entered into when a small component has been developed that can be used in other processes, for example a microchip that can be used in computers.

Checklist for an agent/distributor agreement

This checklist lists matters for inclusion in an agent or distributor agreement.

Products and territory

- Parties
- Territory
- Exporter to sell through distributor in territory exclusivity
- Exporter to refer enquiries to distributor
- Distributor not to re-sell out of territory
- Products involved (description, catalogue)
- New products – policy for new products
- Ownership of brand
- Distributor to protect trademarks, patents, etc
- Procedures for defective goods

Timeframes

- Period of Agreement - depends on the product, usually three years with right of renewal. A termination clause should be included – so many months' notice by either party and anytime by mutual agreement
- Probationary period – one year with review of performance after six months.

Pricing and payment

- Prices – refer to the price list
- Discounts – promotional discounts and responsibilities; the agreement should include the principles to work on, not the detail
- Method of payment and timing
- Distributor to keep books of accounts

Performance targets

- Minimum orders
- Production scheduling and lead times
- Spares and stock – distributor to hold stock/spares but not an agent.
- Communication costs – each party to cover their own costs
- Training and technical support
- Samples
- Advertising and promotion
- Exchange of market information
- Relationship management – contact list, official addresses
- Confidentiality

Termination clauses

- Restraint of trade following termination of agreement

- Early termination for breach of agreement
- Transfer of rights – distribution rights can not be transferred without permission
- Country in which legal action/arbitration to take precedence
- Arbitration – a last resort

How New Zealand Trade and Enterprise can help

To assess your readiness to export, we recommend you score yourself using the Export Assessment Guide within the NZTE how to guide Are You Ready to Export, or use the interactive self-assessment guide at www.nzte.govt.nz/get-ready-to-export.

For businesses that are thinking about export, or that require further export preparation (scores below 70), we recommend the following programmes:

- Workshops and free online courses offered through the Exporter Education Programme.
- The fully funded Enterprise Training Programme designed to help develop and grow your business, complemented by one-on-one follow-up coaching with the course presenter.
- NZTE Enterprise Development Grant - Capability Building component. This grant is designed to assist businesses and entrepreneurs to build business capability. Applicants can apply for co-funding for a range of activities including employing a business mentor, or employing the services of an external expert to help develop a business or marketing plan, complete a feasibility study, or conduct international quality standards certification.

Visit www.nzte.govt.nz to find out more about these programmes.

- Additional Guides are available at www.nzte.govt.nz/develop-knowledge-and-expertise

For businesses that are well under way in their preparation for export (scores of 70 or more), we recommend any of the above the programmes as well as:

- NZTE Enterprise Development Grant – Market Development component. This grant can be used for marketing-related expenditure related to entering or promoting a better position in an international market. For more details refer to www.nzte.govt.nz.

Please note market development activity in Australia is ineligible in respect of grants.

For businesses that are advanced in their preparation for export (scores of 90 or more), we recommend any of the above programmes. In addition we may be able to offer services and market intelligence to help you succeed in export, including:

- assistance with market selection and market entry
- valuable business contacts worldwide
- advice on export procedures and regulations
- overseas market research

For further guidance or clarification please call NZTE on 0800 555 888, email us at info@nzte.govt.nz or visit www.nzte.govt.nz.

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