CLIMMAR

**OCTOBER 2018**

# POSITION PAPER ON COLLABORATION BETWEEN DEALERS AND SUPPLIERS

**Introduction**

*(Note: manufacturers are referred to in this position paper as suppliers)*

As long as suppliers and dealers have existed there has been conflict within the relationship that has led to difficulties with operating a successful dealership with a strong and secure future. Trust and loyalty are the fundamental ingredients for a stable and profitable relationship and if this does not exist between a supplier and a dealership the future relationship will not survive changes or difficulties. We need to reach a situation where the suppliers and dealers are more equal. Today it is simply too uneven. We seek an equal business relationship – with mutual respect.

**Long-term exclusive contracts**

- All contracts should be on exclusive basis to support the dealer
- Secure more equal business relationship between dealer and supplier

The discussion on the termination clauses are two sided. On paper 12 months' notice sounds better than 3 months – but in reality it doesn't matter as long as the contracts are non-exclusive. The supplier can at any time appoint a new dealership across the road. So, really the discussion should be on the terms and conditions.

There are various clauses that can be included in contracts within a legal frame work which can benefit or disadvantage a dealer or distributor. These clauses, such as Intuitu Personae, should be studied very carefully and objected to if they do not suit the long-term objectives of the dealer or distributor agreement. <u>This paper does not seek to explain the legal aspects of contract law or torts but to seek an overall more equitable long-term future for the dealer or distributor and their supplier.</u>

- The dealer should be able to be free in setting up as many businesses as he wants to.
- In specific cases it should be possible for the dealer not to take on a full line.

**Termination clauses**

- Realistic clauses with exclusive rights
- Finance/Bank

The banks are considering the dealers as agents in a market. In addition, the banks are focusing more on the contractual issues between manufacturer and agent. If a dealership has a 10 mill. EUR obligation in a bank and a 6-month termination clause (or in reality day-to-day notice) from a supplier covering 90% of the business, yes that's the problem in a nutshell. And the banks are getting more aware on this crucial issue.

**Compensation**

- Financial compensation based on initial and on-going investment
- Stock and parts return

Compensation can come in the form of unused whole goods being returned for a cost credit, parts being returned under a parts returns programme at a discounted rate. It will rarely cover cost of specialist tools, signage, investment in training or lost profit from future secured sales and service activities.

There needs to be a clear policy to determine compensation for the dealer based on the perceived value of the customer goodwill, market penetration and turnover of the supplier's whole goods and service support income generated by the outgoing dealer.

**Summary**

When all this is said, we also have to look in the mirror. The dealers must be professional and the suppliers have every right to set reasonable demands for selling their product. It's a free world and nobody forces the dealer to sell the products. He could find something else to do. Therefore, a vast part of the demands in the contracts are not unreasonable as for example merchandising, interior and exterior decoration and appearance, staff training etc.

But the business relationship must be equal and reasonable.