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## Commercial Agents Brochure

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# PREFACE

Global trade is becoming a greater challenge: concentration of trade is accelerating dramatically within the EU, the “time-factor” is gaining momentum as a competitive instrument on the production side, and the markets of the industrialised states are characterised by over-capacity resulting in market saturation in many sectors. As such, intensive efforts must be exerted in terms of customer cultivation and customer care, both of which will become one of the most important marketing instruments. Last, but not least the introduction of quality labels and relatively higher environmental standards, as well as the dissemination of e-commerce are serious developments that must be taken seriously by exporters of the developing countries.

Small and medium sized enterprises of the developing world must therefore use all their available resources with increased vigour in order to achieve the goal of gaining a foothold in the European market. In this respect, the German market bears greater potential compared to other markets, in offering a fascinating and promising field of activity. It cannot be denied however that this market also imposes risks upon potential exporters, and such risks must be adequately assessed prior to taking a decision concerning market penetration.

Upon entering the German market, foreign companies have several options; one of which is to be represented in Germany through a commercial agency. Alternatively, the foreign company with its own sales organisation can carry out distribution functions. There is no generally applicable recommendation as to whether a company should work together with a commercial agent or whether it is advisable for a company to set up its own separate sales function. This decision can only be taken from the perspective of a particular company, whereby the criteria of cost, success, and risk have to be taken into consideration.

This publication is a joint product of Global Project Partners e.V. and the National Association of German Commercial Agencies and Distribution (CDH) e.V. and the German-Arab Chamber of Industry and Commerce. We hope that you find the information provided useful and wish you and your trade partners all the success.

# I. INTRODUCTION

## ■ What is CDH?

The National Association of German Commercial Agencies and Distribution (CDH), located in Berlin, is the umbrella organisation for commercial agents in Germany. There are 13 regional associations under the auspices of CDH, covering the whole of the Federal Republic of Germany. The regional associations are engaged in maintaining the interests of their members and dealing with business, legal, tax and other issues which are important for the running of a business.

CDH is also organised into 7 professional associations, which help the Commercial Agencies to solve problems specific to their trade. The professional associations cover most product areas like for example, machines, electro-technology, furniture, clothing, food and semi luxuries etc.

CDH, which comes as the sole organisation for commercial agencies in Germany, is a member of the International Union of commercial agents and Brokers (IUCAB), Amsterdam, and belongs to the group of its “founding fathers”. IUCAB is the international organisation representing the interests of commercial agencies and promoting commercial agencies worldwide. CDH sister-organisations are located in all European countries as well as in the United States.

## ■ How many members are organised within the CDH and what kind of services does CDH render to them?

Approximately 13,000 commercial agents and distributors are organised within the CDH organisation. CDH as a national federation offers the following services to its members:

- Representing members’ interests, not only at relevant ministerial level in Berlin, but also against the panels of the EU for all economic policy, tax policy and legal issues.
- Cooperation with the other umbrella organisations from the spheres of industry and commerce, and the chambers of commerce and industry, in a manner which promotes the benefits of members.

- Public relations
- Economic studies
- Dissemination of Information on the member companies
- Provision of further training courses.

### ■ ■ What role do commercial agencies play in the German economy?

In Germany there are, according to official statistics, approximately 60,000 commercial agencies, employing a staff of 300,000 employees and engaged in product placement between one business enterprise and another. Commercial agencies act as a go-between for goods with a value of approximately 178 billion EUR annually. Moreover, commercial agencies services as intermediaries account for roughly 30% of turnover of goods within the German market.

Asked for their most important customer groups 54% of the commercial agents name the retail trade, 52% the wholesale trade, 47% the industrial sector and 7% the catering sector (multiple answers possible).

## II. GETTING IN TOUCH WITH COMMERCIAL AGENCIES

CDH does not provide such a list of commercial agencies, as the organisation's roster of members is large in size to the extent that it is not possible to keep such a list up to date. But there are various ways through which foreign exporters can get in touch with commercial agencies in Germany:

### ■ Place an advertisement

One way of making contact with agencies is to place an advertisement (in English or in German) in the CDH Association journal "H&V Journal" which is issued on a monthly basis and distributed to the member companies free of charge. In such an advertisement any entity can describe its product in detail and thus appeal specifically to those commercial agencies into whose range such a product would fit. Companies may opt to publish advertisements of their own design, as exemplified hereunder:

*sample of an ad.*

### **HOME TEXTILES**

We are an ISO 9002 certified company in Egypt exporting yarn, fabrics, kitchen linen, and apparel.

We are looking for agents in Germany  
You may visit our website at [www.....com](http://www.....com)

If you are interested, please contact us on the following address:

Name of Company:

Contact person:

Address:

Tel.: international code .....

Fax: international code .....

Email: .....

Alternatively, a given entity may offer its agency in the “H&V Journal” in an advertisement of standard abbreviated form.

To place an advertisement, foreign companies can get in touch directly with:

*Siegel-Verlag Otto Mueller GmbH  
Mainzer Landstrasse 251,  
D-60326 Frankfurt/Main  
Tel ++49 69 7589 0950 | Fax ++49 69 7589 0960  
E-mail: hv-journal@svffm.de | www.siegelverlag.eu*

On request, they will also advise companies on size, copy, layout and positioning as well as sending a price list and a specimen copy.

### ■ Visit CDH at the German Fairs

Furthermore, CDH sets up information stands at important trade fairs in Germany. Foreign companies seeking commercial agencies are welcome to visit the CDH stand at selected fairs, schedules of which can be obtained from the CDH staff at the association. Fairs come as a particularly interesting method for foreign exhibitors to establish direct contacts with commercial agencies and manufacturing companies.

### ■ Contact the CDH associations

Another way is to contact one or more of the 13 regional CDH associations and ask for a list of commercial agencies within that specific regional territory. Some regional CDH associations provide this service for free. This way is particularly advantageous, if the manufacturer wants to market the product initially only in a restricted part of Germany. On demand the regional CDH associations will provide the manufacturer with a list of commercial agencies active in their respective territory. If, for example, the company wants to start selling the product in the south of Germany, it would be appropriate to turn to the CDH regional associations located in this area: CDH regional association Bavaria in Munich or Baden-Wuerttemberg in Stuttgart.

## III. SUPPORTING THE FOREIGN EXPORTER

### ■ What are the advantages for a foreign exporter in working together with commercial agencies in Germany?

Commercial agencies have always had a strong position as distribution partners for foreign companies, for many they have become “pioneers in international business”. The advantages can be summed up as follows:

- The involvement of the commercial agency for foreign companies generally begins by investigating whether the product under question and the relevant selling terms comply with buyer’s requirements.
- The commercial agency informs the foreign exporter with inside information concerning market conditions, tastes and trends, import regulations, particular technical specifications, and above all, insight on the competition in the market.
- The commercial agency enjoys a firm knowledge of prospective customer relationships generated by years of agency and repeatedly successful sales transactions. This provides commercial agencies with an indispensable advantage, especially when launching new products on to the market.

It has to be mentioned here that CDH member companies do not sell directly to the end-consumers. They broker goods only between one business enterprise and another, like for example, between one industrial enterprise and another; or between an industrial enterprise and the wholesale and retail trade.

### ■ Is a given agency allowed to represent the goods of two competing suppliers at the same time?

The sale of competitive products is not allowed unless otherwise agreed. However, a particular characteristic of commercial agencies is that they normally represent several companies at the same time. 90% of all commercial agencies in Germany represent an average of five companies. Commercial agencies representation of a complete range of goods creates synergies which are often regarded as an advantage by the companies which are represented by the agency. Often one product also acts as an advertisement for another.

## ■ How does the commercial agency support the foreign company in marketing its products on to the German market?

The commercial agency is not restricted to selling and distribution responsibilities, whereby the commercial agency will assume the role of a full service company representing the entity in Germany.

As such, the commercial agency fulfills the entire range of functions covered by a company's own sales office, either with its own staff or with additional external helpers. These functions include:

- Receiving and processing orders
- Intensive customer care
- Marketing and acquiring new clients
- Advice and sounding out the market
- Help in selecting the product range to be offered for sale in the market

There are also additional services as, for example:

- Maintaining a depot or stock of samples
- Representation at trade fairs and exhibitions
- Organising a sample show
- Protecting royalties, development work
- Carrying out and monitoring sales promotion, campaigns
- Dealing with complaints and repairs

It should be observed, however, that the range of functions that a commercial agency fulfills varies greatly from company to company. This will depend on the trade concerned, the wishes of the company represented, as well as the marketing strategy of the commercial agency.



## IV. ASPECTS OF COOPERATION

### ■ ■ What aspects should be observed when launching the cooperation with a commercial agency?

Firstly, the territory covered by the agency agreement should be identified. Most of the commercial agencies active in Germany, work in only a predetermined part of Germany, whereby a given German agency is, as a rule, equipped for operations within a given part of Germany. For this reason, it will generally be appropriate for companies to appoint a network of agencies to cater to different territories i.e. an existing sales organisation.

That applies above all in cases where there is a wide range of goods to be sold to the specialist retail trade. A large number of commercial agencies each operating in a different part of Germany will certainly be required in this case. Therefore, in such a case, the supplier should divide Germany into appropriate territories.

### ■ ■ How could the respective territory be defined?

The size of the territory for each agency should depend on population density, the density of industrial and commercial companies, and the propensity for sales particular to the product in question. In one example it could be beneficial to align the sales territories with the individual German federal states (Bundeslaender). In another case it may be sufficient to appoint one agency for Northern Germany, another for Southern Germany, and a third for the rest of Western Germany in between. In many cases the identification of territories may have to take place on a much smaller scale.

The division of Germany into territories should be discussed very thoroughly with the commercial agencies concerned. The method which is probably used most often today is the one in which the foreign manufacturer begins initially with a part of Germany and allows one commercial agency to have exclusive agency rights for this territory. This should naturally be a territory which appears to be particularly promising. After a “trial period”, other agencies can be entrusted with distribution in other territories.

## ■ Do I always have to appoint more than one agent to cover the whole of Germany?

No. Some commercial agencies' connections stretch across the whole of Germany. There are therefore individual instances where a single commercial agency could be assigned for the whole of Germany. A company, for example, that wishes to sell a specific article only to a selected group of important wholesaler companies, could possibly appoint a single commercial agency.

## ■ What could I do, if the assignment of only one agency would not work well for the whole of Germany?

An alternative agency arrangement is to work together with a so-called general agency. This arrangement grants the general agency sole rights for the entire country, as well as the right to appoint sub-agents for regional territories.

This method of distribution is highly advantageous for the foreign manufacturer because it involves dealing directly with one contractual partner in Germany, namely the general agent. This involves channeling commissions and correspondence to only one party, thus promoting a timesaving effect. Moreover the control of the agency network in Germany is the responsibility of the general agency alone.

Above and beyond this, there is the interterritory co-operation of German commercial agencies in the form of associations, which are often known as "commercial agency chains". These associations are to be found above all in the foodstuff and semi-luxury sector. Commercial agencies from different territories meet up, almost all of them represent the same companies. This method offers a comprehensive sales organisation for a foreign company wishing to cover the entire German Market.

## ■ ■ What else do I have to discuss with the agency before entering the German market?

A detailed discussion must take place with the commercial agency at the beginning of collaboration with the purpose of conveying the technical composition of the goods and its applications, so that he or she can advise his customers correctly. It is crucial that the agent fully understands the nature of offered goods, as well as the capabilities of the company represented. This is because the commercial agency can generate an atmosphere of trust for the products it represents with the customers. At least the first orders are almost always only placed, because the customer relies upon the advice of the commercial agent known to him or her.

## ■ ■ Do I need a written agreement with the commercial agent?

The contract between the principal and the commercial agency does not require a particular form, which means, it can be concluded orally, in the exchange of letters or as a conclusive act, e.g. after repeated mediation in business deals.

However, either party to the contract may demand that the contents of the contract are recorded in a document signed by the other partner.

## ■ ■ What kind of provisions should be contained in an agency agreement?

In general, the principle of freedom of contract applies to an agency agreement. Nevertheless, some requirements specified in the German law of commercial agencies are mandatory and may not, therefore, be altered. This applies for example to specific obligations of the parties, commission, termination and indemnity.

**Termination:** refers to the fact that the contractual relationship has been entered into for an indefinite period, it may be terminated during the first year of the contract by giving one-month notice, during the second year of the contract by two-month notice, and during the third to the fifth year of the contract by three-month notice. After the contract has been valid for five years, giving six-month notice may terminate it.

**Indemnity:** after termination of the contractual relationship the commercial agent has the right to claim for indemnity if and insofar as the following prerequisites are given:

- substantial advantages accrue to the principal even after termination of the contractual relationship from business relations with new customers recruited by the agent and
- by reason of termination of the contract, the commercial agent loses the right to commission which, had it continued, he would have had from business already concluded or to be concluded in the future with customers recruited by him, and
- payment of indemnity is equitable taking all the circumstances into account.

Such indemnity shall amount to not more than one year's commission or other annual remuneration calculated on the basis of the average of the last five years' activities of the commercial agent.

To make things easier CDH offers bilingual model contracts available also in English-German for the appointment of a commercial agent (Order No. 590 E/ 9,95 € incl. VAT plus freight). The CDH model contracts observe the relevant legal position and contain provisions on:

- the parties and their obligations
- territory and products
- commission
- duration and termination
- applicable law and jurisdiction.

## V. REMUNERATION

### ■ How does the commercial agent get paid for the service rendered?

In general, the companies represented pay for the services of the commercial agency in form of a commission, whereby the commission is determined by turnover. Since remuneration is only made when orders are brought in and the relevant business has been carried out successfully, the companies represented can from the outset reckon on a fixed percentage for distribution costs.

The commercial agency bears the expenses which occur in the normal course of its business itself, as for example, staff, office, keeping a car on the road.

### ■ Are there other forms of remuneration?

It is possible that the commercial agency receives remuneration in another form in addition to commission, above all a fixed commission. This particularly applies in the launching of foreign products on the German market for a set period of time.

Besides this there is often a special remuneration greater than the normal sales commission for additional services that are rendered in the sales function and for looking after a sales territory assigned to an agent, e.g. customer service or repairs.

### ■ What is the general percentage rate?

It must be pointed out clearly that there is no general commission percentage rate which is the basis for all commercial agency contracts. The percentage commission is negotiated between the company represented and the commercial agency on an individual basis. For this reason it is not possible either to give figures for commission rates negotiated in practice.

Commission percentages are agreed between 1% and 25% for example. The basis for calculation is the extent of the services which are to be performed by the commercial agency and the costs incurred in conjunction with this.

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