



DISCLAIMER: The contents of this text do not constitute legal advice and are not meant to be complete or exhaustive. Although Warwick Legal Network tries to ensure the information is accurate and up-to-date, all users should seek legal advice before taking or refraining from taking any action. Neither Warwick Legal Network nor its members are liable or accept liability for any loss which may arise from possible errors in the text or from the reliance on information contained in this text.

Fact Sheet Distribution – The Netherlands – March 2013

How is a distributor defined under national law?	There is no legal definition under Dutch law, but one may describe a distributor as an independent buyer and reseller of goods.
How does the definition of a distributor differ from that of a commercial agent?	A distributor concludes agreements in its own name and for its own risk and account. An agent acts as intermediary and concludes agreements on behalf of its principal so the parties to the agreement are the principal and the customer. An agent is entitled to commission. A distributor makes its profit by adding a surcharge to the price for which distributor purchased the goods from its supplier (usually the manufacturer).
Are there any specific legislation governing the relationship between a manufacturer and distributor?	There are no specific rules under Dutch law governing the relationship between manufacturer and distributor. General contract law (<i>Burgerlijk Wetboek/BW/Dutch civil Code</i>) applies, which includes several EU regulations, for example on product liability. A distributor who brings goods into the European Economic Area is considered a manufacturer under product liability laws (6:185 et seq. BW).
How is the duration of a contract normally defined?	The duration depends on the individual case. Usually, parties conclude a distribution agreement for a limited or an unlimited period of time. This may also be derived from the factual circumstances of the case. An agreement for a limited period cannot be terminated prematurely, unless this is explicitly agreed or if there are unforeseen circumstances (6:258 BW) or if termination is considered reasonable and fair (6:248 BW).
How long is the notice of termination?	Usually, parties agree to a notice period in writing. If there is no such agreement, a reasonable notice period must be observed which will depend on the factual circumstances, e.g. duration of relationship between the parties, dependence of distributor on its business with supplier. Note that an agreed notice period may be overturned in court if due to the factual circumstances, this is considered too short or too long.
What rights does the distributor have to compensation or indemnity upon termination?	A distributor is, contrary to an agent, not entitled to goodwill. If the contractual or a reasonable notice period is observed, the compensation is deemed to be included in the notice period. If the notice period is too short, the distributor may be entitled to compensation. Under certain circumstances, in addition to observance of a reasonable notice period, just cause is required for termination. In exceptional cases, e.g. if distributor just made large investments under its distribution agreement,



	additional compensation may be due upon termination by supplier.
Are there any laws or regulations relating to restraint of trade/restrictive covenants	There are no specific regulations under Dutch law, but in any event, competition law and certain branch specific rules (e.g. automotive) should be taken into account as well as consumer protection laws if distributor sells to consumers.
Are any particular formalities required for a distribution agreement to be legally valid and enforceable under national law?	There are no formalities under Dutch law but it is advisable to lay down the agreement in writing.

Contact: Annemieke Romein, attorney-at-law at Vlaskamp Advocaten B.V., The Netherlands, ar@vlaskampadvocaten.nl