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CHAPTER 4: Working With a Broker

The food industry defines a broker as an independent organization functioning as a sales representative for multiple manufacturers, usually rewarded by a commission against sales. Brokers are sometimes also called manufacturer's representatives.

To better understand the role of a broker, let's break down the definition to key points:

- **Independent:** Brokers aren't your employees. Brokerage companies are businesses in and of themselves.
- **Organization:** Even if your broker operates as a one-person shop there should be sense of structure and procedure.
- **Sales representatives:** The brokers' job is to sell. They are not consultants or business coaches or anything else. Brokers do represent you and your products to buyers however they don't have free license to sell your product anywhere. You define the geographic area in which they may sell, as well as the trade class, specific products, and accounts. This assignment must be carefully described in the contract.
- **Multiple manufacturers:** Brokers have many clients so you will not have exclusive use of their time nor will they only be representing you to the buyer. You must recognize that they need other clients to make a living and you are only a part of their total operation.
- **Rewarded by commission on sales:** This means that brokers should not be paid fees, or retainers, or by any other method except as a result of sales accomplishments. From time to time a broker may ask for a set fee, a retainer or draw against future commissions and you may agree because your product is new and unproven. If you choose to do this, try do only do it for a limited time period. Once you have an established track record you should insist on the normal commission arrangement.

When you enter into business with a broker you are, in essence, giving the broker a license to use your product to hunt for business in a specific territory. Entering into a relationship with a broker hitches the future of your company to the broker's efforts. If the broker is diligent, engaging and smart, you will be more successful. If the broker is disorganized or isn't focused on selling your line, your sales volume will sag. So you should engage a broker cautiously.

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Choosing a Broker

Start by networking. Ask fellow exhibitors or suppliers at trade events or other manufacturers or importers for their recommendations. Your customers will know the good brokers in their geographic area, so ask them, as well. Finally, other brokers will know their competitors. A good broker in one area can refer you to a similar organization in another area. NASFT members can also purchase a list of NASFT member brokers.

Once you have chosen several prospective brokers, have them send you pertinent information about their companies. You should get a full profile of the company that wants to represent you including:

- The history of the brokerage company.
- Information about its owners.
- The accounts they cover.
- Personal information about the brokers.
- A list of the companies they represent.
- A list of their proudest accomplishments in the specialty food industry.
- Business references.
- Any special services supplied by the brokers.

After checking their references, you will have narrowed the list of potential candidates to two or three. Call each and set up face-to-face meetings. Using trade shows during non-show hours is a good way to do this. It is also a good idea to make store checks to see how the broker's items look on the shelf. When you meet with the brokers, be prepared to discuss your top objectives for the market. You should also determine the level of interest the broker has in your product and discuss the actions the broker would take on behalf of your product line.

Creating a Formal Agreement

Having a written document will help ensure that both you and the broker understand your relationship and your individual responsibilities, and that each of you agrees to the limitations of the relationship. Agreements with brokers that aren't carefully written can lead you into murky legal waters. There are confusing state laws relating to brokers that must be explored including common laws in some states that will allow a broker to be an agent with the legal capability to speak for your company.

Your written agreement should limit your broker's authority in relation to your company. It should include the understanding that, because a broker is not an agent, a broker cannot bind you to accept an order. Only a signed, formal, written agreement will completely define the client–broker relationship. It will establish the format for working together and for ending the relationship if necessary.

What to include in the agreement: The more specifics you include in the agreement, the more secure you can be that your broker will be working for you in the way that you prefer. Important things to consider:

- **Specify the items and/or products that are assigned to this broker.** You do not have to give all your items in a geographic area to a single broker. For example, if you have both foodservice and consumer items, you can assign your items to brokers by their function (e.g., foodservice versus retail trade). Or you could assign them by brand. If you prefer, you may engage several brokers in one geographic area, but stipulate the products that each is assigned.
- **Detail the classes of trade that are covered by this agreement.** If you want, you can specifically assign only the drugstore or gift store or specialty food shop business to a given broker. Other classes of trade include health food stores, supermarkets, food clubs, delis, bakeries and non-traditional food venues, such as discount stores or clothing stores.
- **Carefully detail the geographic area covered by this agreement.** Don't be afraid to get picky with the geographic area assigned to a broker. You may want to define the areas by using combinations of state names, county names or even zip codes.
- **Contract law requires that a start date and the term of the agreement be established.** Setting time constraints on the broker's "hunting license" will encourage the broker to work more efficiently and aggressively on your behalf.
- **Specify the levels of commission and the conditions for earning commissions**. Brokers usually earn a commission equivalent to 5% to 15% of your net selling price of the item. Instead of settling on a fixed price for all of the products in your line, consider a sliding commission scale. Consider paying different levels of commissions on sales to distributors versus direct retail sales. Specify if commissions are to be paid on shipments/orders versus paid orders, and on the gross selling price of an invoice versus the net selling price of an invoice. What action will be taken regarding commissions paid that have become uncollectible on invoices? If you wish, specify that you will be deducting commissions previously paid when, for example, invoices remain unpaid for 90 days or more.
- **Be clear about the state law that governs this client–broker agreement.** Be aware that there are odd state laws that can bind you into a relationship that you do not want. Ask your lawyer to advise you of any unusual brokerage laws in your own state that may affect your relationship with brokers. It is usually best for you if the state law that governs your contracts is the state in which your business is incorporated.
- **Specify the limits of the broker's authority.** Again, be sure of what responsibilities you are assigning to the broker. For instance, what can

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he or she do in areas of discounts, promotions and other terms of sale? Is he or she authorized to give credit?

- **Detail the method by which your relationship with the broker may be terminated.** In essence, you will write the divorce agreement before you and the broker agree to be "married." With the termination process clearly specified in a written document, the broker/manufacturer relationship tends to stay focused.
- **Specify your house accounts (if any).** The written agreement is the place to identify clearly the limits of the broker's "hunting license." Early identification of your house accounts will prevent future misunderstandings and miscommunication.
- **Identify conflicting lines.** Brokers tend to be less sensitive to product conflicts than suppliers are. Tell the broker which competitors' products he may, or may not, represent without violating the letter or spirit of your agreement.
- **Spell out the kinds and amounts of samples that you will provide.** Samples should be controlled. They should relate to special presentations being made for your line, and they should make sense mathematically.
- **Indicate how orders are to be submitted.** Develop a simple, well-organized ordering process and explain how you prefer the broker to send in these orders. For instance, do you want them emailed, faxed, phoned, mailed or input online? No matter which ordering method you use, it should be easy for everyone—you, your broker and your customers.

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- **Specify the frequency of broker feedback that you want.** Do you want quarterly reports of sales? Weekly? Monthly? To simplify the job of comparing the efficiency of your brokers, specify and streamline the way in which your brokers report to you.
- **Specify the kinds of communication that you require.** Information is power, and your broker has information that can help you analyze your business. Tell your broker exactly what you want to know: What products are moving? What is the customer response? What suggestions for improvement of product or sales terms have the potential customers suggested? Who is buying the products? How can you best communicate with those customers? Do you want competitive information? If so, what competitive information?
- **Be clear about collection responsibilities.** Spell out the action you want the broker to take regarding unpaid invoices and collection.
- **Specify information that you want updated about your broker.** For example, how should you be informed about new principals (clients), in-house staffing and ownership changes?
- **Indicate procedures for establishing credit and new accounts.** You should already have standard application forms and agreed-upon credit checks, and your broker should agree to follow your policies.
- **As a legal document, your client–broker agreement should be signed by all parties and should be witnessed.** As already mentioned, seek legal advice throughout the process.
- **Consider adding an arbitration clause.** This requires that both parties agree to resolve any disputes through arbitration rather than the courts.

Getting Started

Once you've entered into an agreement with a broker it is important, early on, to establish goals for the territory. It is also to your advantage to inform your broker about all phases of your business because knowledge, not ignorance, produces sales. Explain what's unusual about your product and detail your key selling points. Be sure to share your company's philosophy as well.

Remember, the broker represents you in a distant marketplace and it is your responsibility to teach your broker how to sell your product. Be generous with what you know about your product and procedures because it will pay off in the form of a well-informed, confident new broker for your products. Explain how your product better than those of your competitors. Share your successful merchandising methods with your broker, too.

You may also want to offer enticements to your newly educated broker to pursue sales of your products aggressively. When you are pioneering a new product line, a good strategy can be to offer double commission for the line's developmental period. Even after the initial phase of broker education is completed, your responsibilities to your broker have not ended.

Managing Your Broker

Manufacturers who have extremely successful relationships with their brokers report that the relationship requires active, frequent attention. You must be prepared to give your time to the process.

First, with the client–broker agreement in mind, you and your broker should agree on initial objectives and on how you will support your broker's efforts. When your broker submits reports about sales activity, you should collect, read and act upon them immediately. Attending to all of your brokers' reports as they arrive will keep you on top of market activity. You will begin to sense how well your relationships with your brokers are working and be able to re-establish objectives and adjust your support of them accordingly. In this way you and your brokers will have realistic objectives and can work in tandem instead of in opposition.

To manage your brokers well, you must reward their accomplishments. First, you must pay them according to your written agreement—and on time. If you don't, your products may move down in priority for the broker. Another way to reward your brokers is to recognize outstanding work with praise, awards, cash, publicity or some combination of these. When an objective is met, send a short, professional note of congratulations. If a broker is doing a fine job, allow him to expand his opportunities to earn. On the other hand, if a broker is doing a poor job, don't expand your relationship until the current assignment becomes productive. Recommending good brokers to other companies is another way to reward them.

Communication should revolve around the results of presentations, the success of item rollouts, reactions to comparative sales reports, changes in market conditions, competitive activity, changes in the customers themselves, and at least once a year, a planning and review meeting with manufacturer. Treat the broker as though he or she is part of your team. Encourage them and support good brokers in the field. Consider accompanying them on sales calls. In this way you and your broker develop an active, ongoing relationship.

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If a broker's performance does not meet your (reasonable) expectations, you should express your concerns and discuss why the goals haven't been reached. Strategies for managing poorly performing brokers include sending periodic reviews to remind them of how important they are to your company's interests, and to show them where improvement is needed.

Terminating a Contract

Unless there is a termination for cause, consider issuing a document to the broker stating where the broker is not meeting expectations and providing a reasonable cure period. This forces you to think through what the issues are and allows the broker to respond appropriately.

If all these strategies fail and your broker still performs badly, you must terminate your association. Although terminating a broker is not a pleasant process it is better than wasting creative time and energy fretting about a problem that is not that difficult to correct. Think of it this way—it is your duty as the company leader to make sure everyone representing your product is doing the best job possible. And if they aren't, you owe it to your brand and your staff to rectify the situation. You also owe it to your current broker because if your relationship isn't going to work they need to move on to a relationship that can be potentially more rewarding and longer-term. And you really owe it to your customers because they meet with the broker more than you do. If they think that your broker is unprofessional, won't they begin to transfer those negative attributes to your product and your company?

The sooner you move onto a new broker, the sooner he or she can begin to rectify any mistakes that have been made. The specialty food business is full of smart, hardworking, professional brokers who can do fine work for you and your products.