

Manufacturer's fact sheet (Turbinex's fact sheet)

Turbinex is a manufacturer based in Australia, which produces turbine engines for the textile industry. It has a solid market share in the EU and has been exporting successfully to Argentina but is keen to establish a more permanent presence in South America generally.

Turbinex is looking to appoint a distributor in Brazil, though it has the option of appointing one of the entities with which it does business in Argentina as distributor as well. It has opted for Brazil rather than Argentina due to the strong economy that Brazil has and due to its growing middle class.

Turbinex would like to appoint an entity with a respectable client base, manufacturing capacity so that it can provide after sales service, marketing expertise in the turbines' sector and an established distribution network.

After a year of searching for such a partner, it decided to embark on negotiations with Roterex, a distributor based in Brazil. Roterex has an established client base and distribution network. Moreover it has the necessary manufacturing capacity and has been an exclusive distributor for the competitor of Turbinex (Perfect Turbines) for over 10 years in both Brazil and Argentina.

Roterex is looking for a new partner due to ongoing problems in its relationship with Perfect Turbines. Before deciding how to proceed it has decided to engage in confidential negotiations with Turbinex. If these negotiations are successful, it has decided to terminate its existing contract with Perfect Turbines that includes a notice provision of 6 months.

Turbinex has sent Roterex its standard contract (which you have been supplied with) and is prepared to enter into negotiations regarding the substantive terms in this contract.

Each party has its own set of concerns. The parties have managed to resolve their differences save for the following issues.

You have been asked to try and resolve all these issues on behalf of your client if you have time. If you do not have enough time, the outstanding issues have been listed in order of priority by the Head of Legal. These issues outstanding are (in order of priority):

1. Territorial exclusivity

Turbinex's position

Turbinex would like to retain the right to appoint another distributor in Brazil, though it is prepared to provide Roterex with an exclusive distribution agreement in Brazil on the proviso that it may also sell its turbines in Argentina.

It has not really considered its operations in the remaining South American countries, though it has taken the view that if the agreement with Roterex works out after one year it would be willing to enter into talks with Roterex about the possibility of appointing it non-exclusive distributor for all of South America.

2. Non-compete clause

Turbinex's position

Turbinex does not want Roterex to sell competing goods in the assigned territory nor does it want Roterex to sell competing goods worldwide, namely *turbines for the textile industry*.

3. Warranties

Turbinex's position

There have been some (past) rumours about faults in the design of the current model of turbines produced by you for the textile industry (the 'Turb 13' turbine).

There was a *production fault* in five 'Turb 13' turbines produced by you; all necessary repairs to these turbines were carried out by Turbinex and the parties affected were compensated. The fault with the production line was addressed and repaired.

Turbinex is willing to provide warranties to Roterex but is keen to limit its liability. It is satisfied with clause 9.2 as it stands.

4. Minimum annual sales target

Turbinex's position

Turbinex would like to include a:

- Minimum annual sales target for Roterex in exchange for granting it exclusivity in Brazil (this would be based on the number of units sold per annum in Brazil, the average number of units sold per annum in most countries is 1 unit, each unit is sold at \$1,000,000 USD); and
- Right to revoke any exclusivity provision granted to Roterex if Roterex fails to meet the minimum annual sales target.

Turbinex may be willing to grant exclusivity in other countries on the same basis.

NB There is a possibility that the parties could both benefit from the service agreements for the turbines sold.