

### **Distributor's fact pattern (Roterex's fact pattern)**

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. The issues outstanding (in order of priority) are:

#### **1. Territorial exclusivity**

##### **Roterex's position**

Roterex would like to be an exclusive distributor for Turbinex's goods in South America but it is willing to be an exclusive distributor in Brazil and Argentina and a non-exclusive distributor in the remaining countries in South America. It is not willing to permit Turbinex to sell the contract goods in the assigned territory where it is an exclusive distributor.

#### **2. Non-compete clause**

##### **Roterex's position**

You have absolute discretion in this regard.

### **3. Warranties**

#### **Roterex's position**

Roterex is concerned by past rumours about faults in the design of the current model of turbines manufactured by Turbinex (Turb13).

If a problem arises it would not like a replacement of the goods, but rather a refund of the price paid plus interest on the sums paid at the rate of 3 per cent per annum above the base rate of Barclay plc in force from time to time, from the date the payment was made to Turbinex until the date the actual refund is made to Roterex.

#### **4. Minimum annual sales target**

#### **5. Fixed initial period**

Roterex would like to ensure that it is granted an initial fixed period of 5 years from the date of the agreement during which Turbinex cannot terminate the agreement.

NB There is a possibility that the parties could both benefit from the service agreements for the turbines sold. The average number of units sold per annum in most countries is 1 unit (each unit is sold at \$1,000,000 USD).