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Lovens tittel: Lov om handelsagenter og handelsreisende

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Eventuelt korttittel: Agenturloven

Lovens fulle tittel på engelsk: Act no. 56 of 19 June 1992 relating to Commercial Agents and Commercial Travellers.

Eventuelt korttittel: The Agency Act

Oppdragsgiver: Justisdepartementet

Dato for oversettelsen: September 1996

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Act on Commercial Agents and Commercial Travellers (Agency Act)

**First part. General Provisions
Chapter I. Introduction**

Section 1 Definitions

For the purpose of this Act "commercial agent" shall mean a person who as a business activity has undertaken by agreement with another person (the principal) to negotiate on an independent and continuing basis the sale or the purchase of goods for the principal's account by procuring orders on behalf of the principal or by concluding transactions in the principal's name.

For the purpose of this Act "commercial traveller" shall mean an employee whose task is to approach third parties for the purpose of negotiating the sale or the purchase of goods, which are not brought along, by procuring orders for the employer or by concluding transactions in the employer's name.

Section 2 Derogation

The provisions of this Act shall not apply when agreement, established practice, commercial convention or other custom provide otherwise, unless the Act states that a provision shall be invariable.

Section 3 Agreements on choice of law

A provision which pursuant to this Act is invariable may not be set aside to the detriment of a commercial agent or a commercial traveller through an agreement that the agency relationship shall be regulated by foreign law, if in the absence of such agreement the relationship would be subject to Norwegian law.

**Second Part. Commercial Agents
Chapter II. Obligations of the Parties**

Section 4 Agreement in writing

Either party may demand that agency contracts be

concluded in writing and that it receive a signed copy of the contract and any subsequent amendments.

The parties may not derogate from the provision of this section.

Section 5 Commercial agent's general obligations

In performing his activities a commercial agent shall look after his principal's interests dutifully and in good faith.

A commercial agent shall in particular:

- 1) make proper efforts to procure orders and, where it is part of the agency contract, conclude transactions,
- 2) inform the principal of orders procured and transactions concluded and of other matters of which the agent is aware that are of significance for the performance of the agency contract, and
- 3) comply with reasonable instructions given by his principal.

The parties may not derogate from the provisions of this section.

Section 6 Commercial agent's care of the principal's goods, etc.

A commercial agent shall take proper care of goods and other items belonging to the principal which the agent has in his charge. The agent shall have such insurance as is customary in the circumstances. The principal's goods shall be kept separate from other goods.

Where a commercial agent is entitled to receive payment for sold goods, he shall keep the amounts received separate from other monies. The agent shall give his principal an account of all amounts received.

Section 7 Obligations of the principal

A principal shall act dutifully and in good faith towards his commercial agent.

A principal shall in particular:

- 1) provide his commercial agent with samples, descriptions, price lists and other necessary documentation relating to the goods concerned,
- 2) obtain for his agent the information necessary for the performance of the agency contract, and
- 3) inform the agent without undue delay of his acceptance, refusal and of any non-execution of a commercial transaction that the agent has procured.

Where the principal anticipates that the volume of transactions will be significantly lower than that which the commercial agent could normally have expected, he shall inform the agent accordingly without undue delay.

The parties may not derogate from the provisions of this section.

Section 8 Compensation

Should the commercial agent or the principal fail to fulfil their obligations pursuant to the agency contract or pursuant to this Act, the counterparty shall be entitled to claim compensation for any losses resulting therefrom. This shall not apply if the other party can prove that such failure is not due to error or negligence on his part.

A party which intends to claim compensation shall notify the other party accordingly without undue delay after he or she learned or should have learned of the circumstances giving rise to the claim. Otherwise the right to compensation shall be lost, unless the counterparty has displayed gross negligence or otherwise acted contrary to dutifulness and good faith.

The party which claims compensation shall take reasonable steps to limit his losses. If he neglects to do so he must bear the corresponding portion of the loss himself.

The compensation may be reduced if such compensation would appear unreasonable for the liable party based on the size of the loss in relation to loss which usually arises in similar cases, and on other pertinent circumstances.

Prior derogation from the provisions of this section to

the detriment of the commercial agent shall not be permitted.

Chapter III Commission etc.

Section 9 Level of remuneration

Where the parties have not agreed on the level of remuneration, a commercial agent shall be entitled to such remuneration as is customarily allowed in the area where he carries on his activities. If there is no such customary practice, remuneration shall be fixed at a level deemed reasonable taking into account all the aspects of the agency contract.

Section 10 Commission during the period of the agency contract

A commercial agent shall be entitled to commission on commercial transactions concluded during the period covered by the agency contract:

- 1) where the transaction has been concluded as a result of his action,
- 2) where a transaction not negotiated by the agent is entered into with a third party whom the agent has previously acquired as a customer for transactions of the same kind, or
- 3) where the agent has been entrusted with a specific geographical area or group of customers, and a transaction not negotiated by the agent has been concluded with a third party belonging to that area or group.

A newly appointed commercial agent shall not be entitled to the commission referred to in the first paragraph if that commission is payable, pursuant to section 11, to the previous agent, unless it is equitable because of the circumstance for the commission to be shared between them.

Section 11 Commission on transactions after termination of the agency contract

A commercial agent shall also be entitled to commission on transactions concluded after the agency contract has terminated:

- 1) if the transaction otherwise satisfies the conditions mentioned in section 10 and the order of the third party reached the agent or the principal before the agency contract terminated, or
- 2) if the transaction is mainly attributable to the agent's efforts during the period covered by the agency contract and if the transaction was entered into without undue delay after the contract terminated.

Section 12 Coming due and payment of commission

The commission shall become due as soon as and to the extent that one of the following circumstances obtains:

- 1) The principal has delivered the goods or paid the purchase amount.
- 2) The principal should, according to his agreement with the third party, have delivered the goods or paid the purchase amount.
- 3) The third party has delivered the goods or paid the purchase amount.
- 4) The third party should, according to his agreement with the principal, have delivered the goods or paid the purchase amount, assuming that the principal had executed his part of the transaction.

The commission shall be paid not later than on the last day of the month following the quarter in which it became due.

Derogation from the provisions of the first paragraph, subparagraphs 3 and 4, and of the second paragraph, to the detriment of the commercial agent shall not be permitted.

Section 13 Extinction of right to commission

A commercial agent's right to commission shall be extinguished if it is established that the transaction between

the principal and the third party will not be executed and this is due to a reason for which the principal is not to blame.

If the reason for non-execution by the third party is that the principal has granted a respite or terminated the transaction, the commercial agent's right to commission shall not be affected. However, this shall not apply where the agent has given his consent.

If the third party only executes part of the transaction, the commercial agent's right to commission on that part which is not executed shall be extinguished if the first and second paragraphs so provide.

Any excess commission which the commercial agent has already received shall be refunded if the right to it is extinguished pursuant to the first to third paragraphs.

Derogation from the provisions of the first to third paragraphs to the detriment of the commercial agent shall not be permitted.

Section 14 Statement of commission

The principal shall supply his commercial agent with a statement of the commission due, not later than the last day of the month following the quarter in which the commission has become due. This statement shall set out all information of significance for calculating the amount of commission.

If a commercial agent's right to commission on a transaction has been entirely or partly extinguished, information thereon shall be set out in the statement of commission for the quarter in which the right was extinguished. The grounds for extinction of the right to commission shall be given in the statement.

Derogation from the provisions of this paragraph to the detriment of the commercial agent shall not be permitted.

Section 15 Commercial agent's right to information

A commercial agent shall be entitled to all the information which is available to his principal and which he

needs in order to check that the statement of commission contains the amounts of commission due to him. The agent shall in this context be entitled to an extract of the principal's books.

If the principal refuses to supply the information mentioned in the first paragraph, or it does not arrive without undue delay, the commercial agent shall be entitled to scrutinise the principal's books himself. The principal may decide that a state authorised or registered auditor shall undertake such scrutiny instead of the agent. The auditor shall be chosen at the agent's discretion. The agent shall have the same rights if there is reason to assume that information set out in the statement of commission or provided pursuant to the first paragraph is incorrect.

Section 16 Commercial agent's lien

If a commercial agent has not received commission or other remuneration from the principal in due time, the agent shall to the extent necessary to secure his claims be entitled to retain goods, material and documents belonging to the principal which the agent has received for the performance of the agency contract. The agent shall have the same right if it is clear that the principal will be delayed in making payment. Letters of attorney and other documents of material significance to the principal may not be retained by the agent.

If a commercial agent has purchased goods for the principal's account and forwarded the goods to the principal, the agent shall be entitled under his lien pursuant to the first paragraph to prevent their surrender to the principal. The agent shall have the same right in respect of goods which he has held for sale for the principal and which have been returned. This shall apply even if the principal has received the transfer documents.

The commercial agent's lien shall be extinguished once the principal furnishes satisfactory security for the agent's claim.

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Derogation from the provisions of this paragraph to the detriment of the commercial agent shall not be permitted.

Section 17 Right to sell retained goods

A commercial agent shall be entitled to sell goods retained pursuant to section 16 once three months have passed after the date on which the principal was notified that the goods were being retained. The goods shall be sold in an advantageous manner. Where possible, the agent shall give the principal reasonable notice that the goods will be sold. The agent shall cover his claims against the principal by way of the proceeds from the sale as far as they go.

If the goods have been exposed to rapid damage or deterioration, or if storage of the goods is disproportionately expensive, they may be sold at an earlier point than that set out in the first paragraph.

Derogation from the provisions of this paragraph to the detriment of the commercial agent shall not be permitted.

Chapter IV Relationship with third parties

Section 18 Main rule regarding commercial agent's right to bind the principal

A commercial agent may not enter into contracts regarding purchase or sale which are binding on the principal unless he is specifically authorised to do so.

Section 19 Principal's duty to notify objections to transactions entered into by the commercial agent

Where a commercial agent has entered into a transaction regarding purchase or sale on behalf of his principal without being authorised to do so, the principal shall notify the third party if the transaction is not approved. Such notification must be made without undue delay after the principal learned about the transaction. Otherwise the principal shall be bound by the transaction. However, this

shall not apply if the third party understood or should have understood that the commercial agent entered into the transaction without being authorized to do so.

Section 20 **Principal's duty to notify objections to orders procured by the commercial agent**

Where the principal is not willing to accept an order procured by his agent, he shall notify the third party without undue delay after having learned about the order. Otherwise the principal shall be deemed to have approved the order.

The first paragraph shall not apply if the commercial agent and the third party have agreed that the order shall cease to apply unless the principal expressly approves it.

Section 21 **Third party's right to withdraw an order**

Where a third party has placed an order with the commercial agent, and the latter has forwarded the order to the principal, the third party has the same right of withdrawal vis-à-vis the principal as if the order had been sent directly to the principal.

The provision of the first paragraph shall not apply if otherwise agreed between the commercial agent and third party.

Section 22 **Self-employed third party's duty to notify objections when entering into a transaction**

Where a self-employed third party has negotiated with a commercial agent and thereafter received notice from the principal confirming a transaction or accepting an order transmitted by the agent, the third party must notify the principal without undue delay if he wishes to contend that no agreement has been concluded, that no order has been placed, or that the transaction or the order have been reproduced incorrectly. Otherwise the transaction shall be deemed to have been entered into with the content set out in the notice from the principal, unless the third party proves otherwise.

Section 23 Commercial agent's right to accept payment and enter into amending agreements

A commercial agent may not accept payment unless he is specially authorized to do so. Nor may he, after the transaction is entered into, grant a respite, reduce the price or make any other amendment in the contract without special authorisation.

If the principal learns that the commercial agent has exceeded his rights pursuant to the first paragraph, he shall notify the third party without undue delay if the payment or the amendment is not authorized. Otherwise the principal shall be deemed to have approved the amendment or payment. However, this shall not apply if the third party understood or should have understood that the commercial agent was not entitled to accept payment or enter into an amending agreement.

This section shall apply correspondingly to purchases from a third party.

Section 24 Objections in the event of defects or delay

Where a third party wishes to contend that defects are present in purchased goods or that they have been delivered too late, notification thereof may be directed to the commercial agent if the transaction has been entered into as a result of his action or if the third party belongs to the agent's geographical area or group of customers. The same shall apply to other notifications intended by the third party for the principal in connection with the performance of the transaction. However, the agent may not make any decision in response to the notifications unless he has specific authorisation to do so.

If the principal learns that the commercial agent has made such decisions as mentioned in the first paragraph without have specific authorisation do so, he shall notify the third party without undue delay. Otherwise the principal shall be bound by the agent's decision. However, this shall not apply if the third party understood or should have understood that the commercial agent made the decision without being

authorized to do so.

This section shall apply correspondingly to purchases from a third party.

Section 25 Termination of agency contract

Where an agency contract is concluded for an indefinite period either the commercial agent or the principal may terminate it pursuant to the rules of the second paragraph.

The period of notice shall be one month for the first year of the agency contract. Thereafter the period of notice shall be extended by one month for each year commenced of the contract until a period of notice of six months is reached.

The parties may not agree beforehand on shorter periods of notice than those laid down in the second paragraph. However, they may agree that the commercial agent may terminate the agency contract at three months' notice even if the contract goes back three years or longer.

If the parties agree on longer periods of notice than those laid down in the second paragraph, the period of notice to be observed by the principal must not be shorter than that to be observed by the commercial agent.

The period of notice shall be reckoned from the last day of the calendar month in which notice of termination is given.

Section 26 Contracts for fixed periods

An agency contract concluded for a fixed period shall lapse when that period expires.

An agency contract for a fixed period which continues to be performed by the parties after that period has expired shall be deemed to be converted into an agency contract for an indefinite period. The earlier fixed period must be taken into account in the calculation of the period of notice in section 25.

The parties may not derogate from the provisions of the second paragraph.

Section 27 Cancellation

The commercial agent and the principal may cancel an agency contract with immediate effect if either party has failed to fulfil his obligations pursuant to the contract or this Act and this entails a material breach of contract.

The party who cancels the contract must notify this without undue delay after he learned or should have learned about the circumstance entitling him to cancel the contract and that it could entitle him to cancel the contract. Otherwise the right of cancellation shall be extinguished. However, this shall not apply if the other party has displayed gross negligence or otherwise acted contrary to dutifulness and good faith.

Derogation made from the provisions of this paragraph to the detriment of the commercial agent shall not be permitted.

Section 28 Indemnity

When an agency contract is terminated, the commercial agent shall be entitled to an indemnity if and to the extent that:

- 1) he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal will continue to derive substantial benefits from the business with such customers, and
- 2) the indemnity is equitable having regard to all the circumstances, including the commission lost by the commercial agent on contracts with customers as mentioned in subparagraph 1.

The provision of the first paragraph shall apply correspondingly when an agency contract is terminated as a result of the commercial agent's death.

The amount of the indemnity under the first or second paragraph shall not exceed a figure equivalent to one year's indemnity. This amount shall be calculated on the basis of the commercial agent's average annual remuneration over the preceding five years. If the contract goes back less than five

years the indemnity shall be calculated on the basis of the average for the period in question.

The parties may not derogate from the provisions of this section to the detriment of the commercial agent before the agency contract expires.

Section 29 Lapse of the right to an indemnity when the contract is cancelled etc., by the principal

A commercial agent shall not be entitled to the indemnity referred to in section 28 if the principal cancels with immediate effect or terminates the contract because of default which entails a material breach of contract and which is attributable to the agent.

The parties may not derogate from the provisions of this section to the detriment of the commercial agent before the agency contract expires.

Section 30 Lapse of the right to an indemnity when the commercial agent terminates or assigns the agency contract to another person

A commercial agent shall not be entitled to an indemnity pursuant to section 28:

- 1) where the agent terminates the agency contract, unless such termination is justified by circumstances attributable to the principal,
- 2) where the agent terminates the agency contract, unless such termination is on grounds of age, infirmity or similar circumstances in consequence of which the agent cannot reasonably be required to continue his activities, or
- 3) where, with the agreement of the principal, the agent assigns his rights and duties under the agency contract to another person.

The parties may not derogate from the provisions of this section to the detriment of the commercial agent before the agency contract expires.

Section 31 Time-limit for claiming an indemnity

A commercial agent shall lose his entitlement to an indemnity if within one year following termination of the contract he does not notify the principal that he intends to pursue his entitlement.

The parties may not derogate from the provisions of this section to the detriment of the commercial agent before the agency contract expires.

Section 32 Commercial agent's duty of care upon termination of the contract

If the agency contract has terminated, the commercial agent shall, until such time as the principal is able to take care of his interests himself, take the measures necessary to safeguard the principal against loss. The agent's duty pursuant to the first sentence shall not apply if such measures entail material expense, inconvenience or financial risk. The agent shall be entitled to remuneration for the measures taken.

Section 33 Commercial agent's duty to return goods etc.

Once the agency contract has terminated, the commercial agent shall return to the principal goods, material and documents he has received in order to perform the contract. The agent shall nevertheless be entitled to exercise a lien pursuant to section 16 and to sell pursuant to section 17.

Chapter VI Miscellaneous provisions**Section 34 Restraint of trade**

An agreement between the commercial agent and the principal restricting the agent's right to carry on business activities following termination of the agency contract (restraint of trade clause) shall be binding on the agent only if and to the extent that:

- 1) it is concluded in writing,
- 2) it relates to the geographical area or the group of

- customers entrusted to the agent, and
- 3) it is related to the kind of goods covered by the agency contract.

The restraint of trade clause shall be valid for not more than two years after the termination of the agency contract.

A restraint of trade clause may be set aside under the Contract Act.

Section 35 Certain notices

A notice properly dispatched by the commercial agent in accordance with sections 8, 17 or 31, by the principal in accordance with sections 8, 19, 20, 23 or 24 or by a third party in accordance with section 22, may be invoked even though it has been delayed, has not arrived at all or has become garbled.

Third Part Commercial Travellers Chapter VII Commercial Travellers

Section 36 Exclusive clause

Unless authorised to do so, a commercial traveller shall not be entitled to negotiate the sale or purchase of goods for persons other than his employer.

Section 37 Commission for commercial travellers

Where a commercial traveller is remunerated entirely or in part by commission, sections 10 to 15 shall apply correspondingly.

Section 38 Refund of expenses

A commercial traveller shall be entitled to special refund for expenses on travel and subsistence, postage, telegrams, telephone calls and similar expenses.

The employer shall be obliged on request to provide the commercial traveller with the advance necessary to meet such expenses.

Derogation from the provisions of this section to the

detriment of the commercial traveller shall not be permitted.

Section 39 Relationship with third parties

The provisions of sections 18 to 24 and section 35 shall apply correspondingly.

Section 40 Notice of termination

Where a commercial traveller has been employed for at least six months, a reciprocal notice of termination of at least three months shall apply. The notice of termination shall run from and including the first day of the month after notice was given.

Section 41 Indemnity

Where a commercial traveller is remunerated entirely or in part by commission, section 28 shall apply correspondingly.

However, a commercial traveller shall not be entitled to an indemnity pursuant to section 28 if he is liable to dismissal under section 66 of Act no. 4 of 4 February 1977 relating to Worker Protection and Working Environment. Nor shall a commercial traveller be entitled to an indemnity if he himself gives notice, unless it is deemed equitable in the circumstances that he receive an indemnity.

Nor shall be the commercial traveller entitled to an indemnity to the extent that he has inflicted a loss on the employer by not fulfilling his obligations under the contract or this Act. However, this shall not apply if the commercial traveller can prove that the non-fulfilment is not attributable to error or neglect on his part. If the employer has neglected to take reasonable steps to limit his loss, the employer must bear the corresponding portion of the loss. The reduction in the indemnity may be curtailed if it would appear unreasonable for the commercial traveller based on the size of the loss in relation to loss which usually arises in similar cases, and on other pertinent circumstances.

If a commercial traveller is paid an indemnity, section 38, third paragraph, of the Contract Act shall not apply.

The provision of section 31, cf. section 35, shall apply correspondingly.

Fourth Part. Final Provisions

Chapter VIII. Commencement, transitional provisions, amendments to other Acts

Section 42 Commencement

This Act shall come into force on 1 January 1993.

Section 43 Transitional provisions

Agency contracts entered into prior to 1 January 1993 shall until 1 January 1994 be regulated by the third and fourth chapters of Act no. 1 of 30 June 1916 on Commission, Commercial Agency and Commercial Travellers.

Section 44 Amendments to the Commission Act

The following amendments shall be made to Act no. 1 of 30 June 1916 on Commission, Commercial Agency and Commercial Travellers: - - -