

## PROVISIONS OF FRENCH COMMERCIAL CODE

### Article L441-2-1

For the agricultural perishable products or short cycle production made products, animal-based products, carcass-based products, fish-based or aquaculture products, listed by decree, a distributor or service provided can benefit from discounts and rebates or arrange remuneration of services dedicated to favor the productsq commercialization and not related to sale and purchase obligations or, other services rendered upon resale as defined in Article L.441-7 of Commercial Code, only if they are provided in a written agreement related to the sale of the products by the supplier. This agreement shall contain in particular provisions related to covenants regarding volumes, price definition conditions depending on volumes and quality of the products produced by the supplier.

When a professional standard agreement for the above activities, is included in a inter-professional agreement adopted by an inter-professional organization, (ō ) the agreement shall be compliant with such professional standard agreement.

Any violation of the provisions of this Article shall prosecuted with a fine of " 15 000.

### Article L441-3

Any purchase of products or services rendered for a professional activity must be covered by an invoice. The seller shall issue when the sale or the service is made an invoice. The purchaser shall require such invoice. The invoice shall be made in two originals. The seller and the purchaser shall keep each original. The invoice must indicate the partiesqname, their address, the date of the sale or service, its precise description, and the unit price VAT excluded of the sold products or rendered services and any discount applying on the sale or service date and directly linked to the sale or service operation, excluding any anticipated payment discount which does not appear on the invoice. The invoice must also indicate the date on which the payment shall be made. The invoice indicates the anticipated payment terms and the penalty rate applicable in case or late payment. The payment is deemed made on the date when the money is made available for the creditor or any subrogated entity or person.

### Article L441-4

Any breach of Article L. 441-3 shall be punished by a fine of " 75000. The fine may amount up to 50 % of the invoiced amount or the amount which should have been invoiced.

### Article L441-5

Legal entities may be criminally liable pursuant to Article 121-2 of Criminal Code for breaching Article L. 441-4. Penalties incurred by legal entities are:

1<sup>o</sup> a fine pursuant to the conditions set out in Article 131-38 of Criminal Code;

2<sup>o</sup> exclusion of public tenders for a maximum 5-year term, pursuant to paragraph 5<sup>o</sup> of Article 131-39 of Criminal Code.

Supprimé: service

Supprimé: commercial cooperation

#### **Article L441-6**

Any producer, service provider, wholesaler, importer must provide any purchaser of products or customer for services within a professional activity, who request so, its general terms and conditions of sale. These terms and conditions are deemed the basis of the commercial negotiation. They contain:

- the sale conditions;
- the unit price list;
- the discounts;
- the payment terms.

The general terms and conditions of sale may differ from a range of purchaser of products or service customers, and in particular, between wholesaler and retailers. The conditions under which such categories shall be defined by means of a decree depending on the turnover, the clientele kind and the distribution kind. In this case, the obligation to provide the terms and conditions pursuant to the 1st paragraph above shall only apply to purchasers of products or service customer from a same range. Any producer, service provider, wholesaler or importer may also agree with a product or service customer on specific terms and conditions of sale justified by the specificity of rendered services, which are not subject to the above obligation to communicate. Unless otherwise provided or agreed in the conditions of sale or between the parties, the payment terms are a thirty-day period after the products delivery or rendered service date.

Notwithstanding the preceding paragraph, [specific payment terms for road transportation, car leasingō ].

The payment terms must describe their application conditions and the late payment interest rate due on the day following the payment date as indicated on the invoice. Unless otherwise provided and limited to a minimum of one and a half times the legal interest rate, such rate is equal to the European Central Bank most recent refinancing rate plus 7 %. Late payment penalties are due without any previous reminder. The general conditions of sale may be communicated by any means compliant with the concerned business.

May be punished by a fine of " 15.000 any non compliance with the required payment terms defined in paragraph 8 and 9 above, the absence of indication of the payment conditions as defined in paragraph 10 above, and imposing rates or payment terms non compliant with the same paragraph.

**Supprimé:** Any breach of this Article is

Legal entities may be criminally liable pursuant to Article 121-2 of Criminal Code.

The penalty incurred for legal entities is the fine defined in Article 131-38 of said code.

**Article L441-7**

I. An agreement between a supplier and a distributor or a service provider defines :  
1° the conditions of sale the products or of services as they result from commercial negotiation ;  
2° the conditions in which a distributor or a service provider consent to render to a supplier, upon the resale of the products or upon any services to end-consumers, any services which may favor their commercialization but does not relate to purchase, nor sale obligations, nor the other services.  
This agreement, entered into by March 1 of each year, shall define the purpose, the date defined, and the conditions for performing the obligations and its remuneration, and, for services having a commercial purpose, the products or services to which they relate.

If the commercial relation is made in the course of a year, such agreements shall be made within two months from the date when the first order is placed.

These provisions does not apply to products referred to in Article L.441-2-1 of this Code.

II. . Shall be punished any violation of this Article by a fine of " 75 000:

(Å )

**Article L442-2**

The fact for any party having a commercial activity to resale or announce a resale of products as it is at a price inferior to its effective purchase price is punished by a fine of " 75 000. This fine may be increased to half of the advertising expenses in case some advertising, whatever means or media used, indicates a price inferior to its effective purchase price.

The effective purchase price is the net unit price appearing on the purchase invoice less the sum of all financial amounts granted by the seller expressed in percentage of the unit price of the product plus taxes, plus taxes over turnover, specific taxes related to this resale and the transportation price.

(Å )

**Supprimé:** The commercial cooperation agreement is an agreement by which a distributor or a service provider undertakes to render to a supplier, within the resale operation of the supplier's products or the services made to consumers, services which purpose is to improve their sale but which does not correspond to purchase or sale obligations.¶

¶ The commercial cooperation agreement indicating the service description and its remuneration term must be made, before they are provided, either in a sole document, or a bundle of documents containing an annual master agreement and the related specific agreement.¶

¶ Each party shall keep one original of the commercial cooperation agreement.¶

¶ The sole document or the master agreement shall be made before February 15.

**Supprimé:** The sole document or specific agreements shall indicate the date when the services shall be rendered, their term, remuneration and the concerned products.¶

¶ In any event, the remuneration of the service rendered is expressed by a percentage of the net unit price of the concerned product.¶

¶ The conditions pursuant to which a distributor or a service provided is remunerated by its suppliers as a consideration of services which does not fall under the commercial cooperation agreement, in particular related to international agreements, shall be made in two originals which shall be kept by each party and shall describe the service rendered.¶

**Supprimé:** 1° the fact not to be able to justify to have entered into a commercial cooperation agreement indicating the services rendered and their remuneration, within the timeframes defined above in paragraph I ;¶

2° the fact not to be able to justify to have entered, before providing the services, into specific agreements describing the related service date, their term, their remuneration and the concerned products ;¶

3° the fact not to be able to justify to have entered into the agreement referred to at the end of the last paragraph of paragraph I;¶

4° the fact for a distributor or a service provider not to indicate to its suppliers, before January 31, the aggregate ... [1]

**Supprimé:** , less the amount of all financial amounts granted by the seller expressed in percentage of the unit price of the product, and exceeding a threshold of 20 % as from January 1, 2006 and 15 % as from January 1, 2007

**Article L442-6**

I. . Shall be held liable, with the obligation to compensate the loss incurred, any manufacturer, any person or legal entity making trade or having industrial business (õ ), which :

1° has practices with another party with whom it has relations, or obtains from such other party, discriminatory prices, payment terms, conditions of sale or purchase, which have no effective consideration, and, consequently creates for this other party an advantage or a disadvantage in the competition;

2° a) obtains or attempts to obtain from such other party any advantage which has no consideration in services either effectively made or manifestly not proportionate in regard to the value of the service rendered. Such advantage may in particular be a compensation, which is not based on a common interest with no proportionate consideration, for financing a promotional operation, an acquisition or an investment, in particular related to a shop renovation, or a merger or partnership between companies using trade names for shops or purchasing organizations. Such advantage may consist of an artificial globalization of turnovers or request for alignment with other clientsqcommercial conditions ;

b) abuses from the dependance of another party or from its purchasing or sale power by requiring commercial conditions or obligations which are not justified. Requirement for proposing to another party the sale of more than a product in consideration of any advantage for such party constitutes an abuse of purchasing or sale power if this impedes access to the market of similar products;

3° obtains or attempts to obtain from such other party an advantage, as a condition precedent to purchase orders, without any written commitment to proportionate purchase volume of products and, as may be from time to time, without a service requested by the supplier and agreed in writing;

4° obtains or attempts to obtain from such other party, by threatening to terminate brutally all or a part of the commercial relations, prices, payment terms, conditions of sales or commercial cooperation, manifestly derogating to general terms and conditions of sales or services;

5° terminates brutally, even partially, an effective commercial relation, without any prior written notice-period consistent with the term of the commercial relation and compliant with the minimum notice-period, as may be from time to time defined by inter-professional agreements. (õ );

6° (õ );

7° (õ );

8° (õ );

9° does not give its general terms and conditions of sale to a professional purchaser of products or professional beneficiary of services who requests for such conditions;

II. . (...).

**Supprimé:** 1° the fact not to be able to justify to have entered into a commercial cooperation agreement indicating the services rendered and their remuneration, within the timeframes defined above in paragraph I ;¶

2° the fact not to be able to justify to have entered, before providing the services, into specific agreements describing the related service date, their term, their remuneration and the concerned products ;¶

3° the fact not to be able to justify to have entered into the agreement referred to at the end of the last paragraph of paragraph I;¶

4° the fact for a distributor or a service provider not to indicate to its suppliers, before January 31, the aggregate amount of the remunerations related to all the services rendered for the preceding year, expressed in percentage of the turnover for each products concerned.¶

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III. . Legal entities may be criminally liable for any breach defined in paragraph II pursuant to the conditions of Article 121-2 of Criminal Code. The penalty incurred is provided for in Article 131-38 of Criminal Code.¶

1° the fact not to be able to justify to have entered into a commercial cooperation agreement indicating the services rendered and their remuneration, within the timeframes defined above in paragraph I ;

2° the fact not to be able to justify to have entered, before providing the services, into specific agreements describing the related service date, their term, their remuneration and the concerned products ;

3° the fact not to be able to justify to have entered into the agreement referred to at the end of the last paragraph of paragraph I;

4° the fact for a distributor or a service provider not to indicate to its suppliers, before January 31, the aggregate amount of the remunerations related to all the services rendered for the preceding year, expressed in percentage of the turnover for each products concerned.

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III. . Legal entities may be criminally liable for any breach defined in paragraph II pursuant to the conditions of Article 121-2 of Criminal Code. The penalty incurred is provided for in Article 131-38 of Criminal Code.