



# Contracts

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## Discovering Connections

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### **ACTIVITY (PAGE 148)**

#### **Part A:**

For these activities, reasoning and discussion are more important than the correct answers. The cultural aspects of rental contracts are very important and should be explored. International rentals are often very complex because each side carries his or her own cultural expectation. What is standard in your country? No detail is too small to be discussed since it may not seem small to the other side. Does your rental contract include a requirement that the participants help clean the common areas? In some countries it does. Does a rented apartment have to have appliances, such as a stove and refrigerator? Do you assume there is hot water? We do in the United States; look at this example from the Fairfax County, Virginia web page:

Lack of heat (in season) and hot water (year round) are violations of the Virginia Uniform Statewide Building Code (VUSBC), and of your lease. Contact the Fairfax County Health Dept. at 703-246-2300, TTY 711, to request an inspection, and, if the landlord doesn't respond, file a complaint form with the Consumer Protection Division at 703-222-8435, TTY 711.

*Source: [www.fairfaxcounty.gov/consumer/tenant/tenant\\_landlord\\_faq.htm#question13](http://www.fairfaxcounty.gov/consumer/tenant/tenant_landlord_faq.htm#question13)*

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## Legal Listening

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(page 150)

### B. Listening Script

*Mrs. Gonzales:* Good morning, Ms. Sujan. How are you doing?

*Ms. Sujan:* Good morning, Mrs. Gonzales. It's good to see you again.

*Mrs. Gonzales:* My secretary tells me that you want to sell your car.

*Ms. Sujan:* Yes, you know I never really cared for it. It was my late husband who was crazy about it.

*Mrs. Gonzales:* You know, it's only been two months since your husband died. Are you sure you want to get rid of it?

*Ms. Sujan:* I'm sure. It just reminds me of my husband.

*Mrs. Gonzales:* Have you found a buyer?

*Ms. Sujan:* That's why I am here. I need you to handle the sale for me.

*Mrs. Gonzales:* You know, you could really handle this matter yourself.

*Ms. Sujan:* I know, but I'd prefer that you do it.

*Mrs. Gonzales:* Okay. Let's start with the car. What year and make is it?

*Ms. Sujan:* A 1931 Cadillac convertible coupe. It has a Fleetwood custom body, white, with a rumble seat. Ted told me when he bought it that it was in mint condition—the original paint and upholstery.

*Mrs. Gonzales:* What is the vehicle identification number?

*Ms. Sujan:* I have it right here—CA49862.

*Mrs. Gonzales:* Who is the buyer?

*Ms. Sujan:* Arnold Stallone. He's offered me \$190,000.

*Mrs. Gonzales:* Are you sure that is a fair price?

*Ms. Sujan:* Oh, yes. Ted had it appraised just six months ago, and it's fair.

*Mrs. Gonzales:* Let me check your personal information to make sure everything's current. Martha A. Sujan, living at 1610 N. Wilcrest Blvd., Tucson, Arizona 85701.

*Ms. Sujan:* Yes.

*Mrs. Gonzales:* Telephone number: 520-555-4591.

*Ms. Sujan:* Yes.

*Mrs. Gonzales:* When are you planning to transfer title to the car?

*Ms. Sujan:* If you can have the papers ready by next Friday, I'd like to transfer it then.

*Mrs. Gonzales:* Why don't we just say next Friday at 2:00 PM?

*Ms. Sujan:* Fine, I'll see you then.

### Client Worksheet for Sale of Goods

Client's Full Name: **Martha A. Sujan**

Address: **1610 N. Wilcrest Boulevard, Tucson, Arizona 13560**

Telephone Number: **520-236-4591**

Description of property to be conveyed: **1931 Cadillac convertible coupe, white, Fleetwood custom body with rumble seat, VIN CA49862**

Buyer: **Arnold Stallone**

Seller: **Martha A. Sujan**

Consideration: **\$190,000.00**

Date for execution that should appear on contract: **Next Friday from the current date**

1. The answers are in bold and underlined in the bill of sale.

### BILL OF SALE

Dated: **The next Friday after the current date. You might want to discuss the difference between "next Friday" and "this Friday" if it is a problem area for your students.**

**Martha A. Sujan**, referred to as "SELLER," sells, bargains and conveys all of SELLER'S rights, title and interest in:

Make: **Cadillac**

Model: **Convertible coupe, Fleetwood body** [You may need to tell the students that a coupe (pronounced "coop") has two doors.]

Style of the vehicle: **two door with rumble seat**

Year of vehicle: **1931**

Vehicle Identification Number (VIN): **CA49862**

to Arnold Stallone, referred to as “BUYER”, his heirs and assigns.

Martha A. Sujan acknowledges receipt of a total of **\$10,000.00** [this is not on the tape so students can enter any amount they want to, but they should notice that this information is not available on the tape] (**ten thousand** & no/100 Dollars) from Arnold Stallone, BUYER, in partial payment of the agreed total sales price of **\$190,000.00**, (**one hundred and ninety thousand** & no/100 Dollars).

Martha A. Sujan, SELLER, shall remain fully liable for any undisclosed liens or encumbrances. SELLER, Martha A. Sujan, warrants that there are no liens or encumbrances on the goods sold, and that **SELLER**'s title to the goods is clear and merchantable. Martha A. Sujan, SELLER, shall defend Arnold Stallone from any adverse claims to SELLER's title to the goods sold.

The goods sold herein are not sold by a merchant in the field. THESE GOODS ARE SOLD WITHOUT U.C.C. WARRANTY OF ANY KIND, including MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The BUYER, Arnold Stallone, acknowledges examining the goods sold herein. This provision may not be applicable, and legal rights may vary between states.

The parties agree to the terms and conditions stated herein:

\_\_\_\_\_, SELLER (signature)

Martha A. Sujan (typed name)

\_\_\_\_\_, BUYER (signature)

Arnold Stallone (typed name)

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## Legal Thumbnail

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### Competent Parties (page 152)

The *Kiefer* case is interesting to discuss further in class. Excerpts from the case are included for your use. The dissent talks of necessities. In the 1960s, the dissenting judge considered a car a necessity. This might be more true in the 1990s. In some countries having a car to get back and forth to work is not a necessity, so this is also an interesting place to bring in cultural differences.

*Kiefer v. Fred Howe Motors, Inc.*, 39 Wis.2d 20, 158 N.W.2d 288 (1968)

#### Majority Opinion



The general rule is that “. . . the contract of a minor, other than for necessities, is either void or voidable at his option.” The only other exceptions to the rule permitting disaffirmance are statutory or involve contracts which deal with duties imposed by law such as a contract of marriage or an agreement to support an illegitimate child. The general rule is not affected by the minor’s status as emancipated or unemancipated.

Undoubtedly, the infancy doctrine is an obstacle when a major purchase is involved. However, we believe that the reasons for allowing that obstacle to remain viable at this point outweigh those for casting it aside. Minors require some protection from the pitfalls of the market place. Reasonable minds will always differ on the extent of the protection that should be afforded. For this court to adopt a rule that the appellant suggests and remove the contractual disabilities from a minor simply because he becomes emancipated, which in most cases would be the result of marriage, would be to suggest that the married minor is somehow vested with more wisdom and maturity than his single counterpart. However, logic would not seem to dictate this result especially when today a youthful marriage is oftentimes indicative of a lack of wisdom and maturity.



## Dissenting Opinion



[A]n automobile to this respondent was a necessity and therefore the contract could not be disaffirmed. . . . Automobiles for parents under 21 years of age to go to and from work in our current society may well be a necessity, and I think in this case the record shows it is. . . .



### Legal Consideration (page 153)

This is a very brief introduction to consideration and in no way covers the complexity of the requirement.

### Exercise A. Listening

(page 153)

#### 1. Listening Script

A. In the park

*Joe:* Hey, you're Bert, right? Sam says you always have good stuff.

*Bert:* I don't know any Sam. What are you talking about?

*Joe:* You know stuff, you know, blow, nose candy.

*Bert:* Oh?

*Joe:* Cocaine.

*Bert:* Oh, that stuff.

*Joe:* So you have it?

*Bert:* Maybe. What's it worth to you?

*Joe:* It's a hundred, right?

*Bert:* Beat it. Don't waste my time. How old are you anyway? 16, 17?

*Joe:* So how much do you get?

*Bert:* One and a half.

*Joe:* \$150!!!! What kind of stuff have you got?

*Bert:* Shut up, you're advertising. You're not interested; lots of others are.

*Joe:* No, no, I'm cool. Here's my money.

*Bert:* Here's your stuff.

## B. On the beach

*Mary:* That's really a beautiful painting. Do you do portraits?

*Artist:* Only when I really need the money.

*Mary:* Do you need the money now?

*Artist:* Actually, I do. I need more supplies. Name's John, by the way.

*Mary:* Well, John, I'd like to talk with you about painting a portrait of my daughter. How much do you charge?

*Artist:* What size portrait were you talking about?

*Mary:* It doesn't have to be huge.

*Artist:* How about 18 by 24? I could do a nice sketch here on the beach for 45 bucks, but if you want a formal portrait, I charge \$300.

*Mary:* I want the portrait, not the sketch. How do you want me to pay you?

*Artist:* You pay me half now and half when it's done. Would she come to my studio, or would I have to drive to her house?

*Mary:* Oh, we live up the beach. Do you see that yellow house up there? That's ours. You could come to our house.

*Artist:* How soon do you want the portrait?

*Mary:* Well, her father's birthday is in a couple of weeks, and I'd like it by then.

*Artist:* When do you want me to start?

*Mary:* Tomorrow, if it's okay. I don't have a check with me now, but I'll have one for you tomorrow when you come. Is 10 okay? Here's the address and my telephone number. Call me if there's any problem.

*Artist:* See you tomorrow at 10.

2. Here is a summary of the elements that students should use as a basis for their decisions.

## A. In the park—no contract

- |                             |   |
|-----------------------------|---|
| (1) competent parties       | One is a minor (teenager and a drug dealer).                  |
| (2) subject matter          | Illegal sale of cocaine                                       |
| (3) legal consideration     | Money (\$150)   |
| (4) mutuality of agreement  | Both knew what was going on.                                  |
| (5) mutuality of obligation | Neither would be bound because of the illegal subject matter. |

B. On the beach—probably, although mutuality of agreement is arguable	
(1) competent parties	Yes, from the information you are given both parties appear to be competent.
(2) subject matter	Portrait painting is legal.
(3) legal consideration	Money (\$300)
(4) mutuality of agreement	It depends on the definition of a formal portrait. If the artist painted an abstract portrait, is that what was agreed to? What if the artist uses watercolors instead of oil paints?
(5) mutuality of obligation	Yes, oral contracts are binding. The problem always is proving that there was an oral contract.

### Exercise B. Reading for Detail

(page 154)

1. Arnold Stallone
2. Martha A. Sujan
3. \$190,000.00
4. Yes. All contractual elements are met.

### Offer (page 155)

If you want to discuss noncompetition clauses in greater depth, an interesting case involving a noncompetition agreement for veterinary services in Laramie, Wyoming, is *Hopper v. All Pet Animal Clinic, Inc.*, 861 P.2d 531 (1993).

Other sources on noncompetition agreements are:

- Restatement (Second) of Contracts, §188
- *A.E.P. Industries, Inc., v. McClure*, 308 N.C. 393, 302 S.E.2d 754 (1983) (see answer to Exercise E on page 82)
- *Reddy v. Community Health Foundation of Man*, 171 W.Va. 368, 298 S.E.2d 906 (1982)



**Exercise C. Review, Summarizing, and Analysis**

(page 157)

1. The court held that there was a valid contract, but if Mr. Zehmer's offer had been made in jest, there would not have been a valid contract. So either answer is acceptable here as long as it is supported by the students with facts from the case.
2. Extremely important. See answer to Question 1.
3. It depends on the students' answers to Question 1. In the actual case Zehmer was required to sell his farm to Lucy because Lucy requested specific performance rather than monetary damages.
5. Intent is what causes a person to act. Normally intent is implied through circumstantial evidence because we can't read a person's mind to see what he or she was actually thinking at the time. Student answers will vary for the last portion of the question.
6. Yes. If that could be proven through circumstantial evidence.

**Exercise D. Role Play**

(page 157)

Students may try to introduce additional facts. Information from the case is provided here for you to give the students as they are preparing their arguments.



In his testimony Zehmer claimed that he "was high as a Georgia pine," and that the transaction "was just a bunch of two doggoned drunks bluffing to see who could talk the biggest and say the most." That claim is inconsistent with his attempt to testify in great detail as to what was said and what was done. It is contradicted by other evidence as to the condition of both parties, and rendered of no weight by the testimony of his wife that when Lucy left the restaurant she suggested that Zehmer drive him home. [*Lucy v. Zehmer*, 196 Va. 493, 84 S.E.2d 516 (1954)]



Other factual evidence discussed by the court is

- Zehmer did not deliver the “memorandum” to Lucy.
- Zehmer refused to accept Lucy’s \$5 to “seal the bargain” and told Lucy that he did not intend to sell the farm and that it was all a joke.
- Zehmer wrote two agreements, changing the “I” in the first agreement to “We” (“We hereby agree to sell . . .”) in the second agreement.
- Lucy and Zehmer discussed the sale for 40 minutes before signing the “agreement.”

See Part 3, Text 6 (page 279) for the court’s Zehmer holding.

### Exercise E. Analysis

(page 159)

1. The first paragraph mentions the consideration and limits the noncompetition agreement to a certain number of years, and the term *not compete* is defined in the second paragraph.
2. Probably not. It is too broad. In *A.E.P. Industries, Inc., v. McClure*, 308 N.C. 393, 302 S.E.2d 754 (1983), several factors were listed that are necessary for a valid and enforceable covenant not to compete. The covenant must be
  - in writing
  - part of a contract of employment
  - based on reasonable consideration
  - reasonable in duration and geographic limitations
  - not against public policy

In the statement here, there are no time or geographic limitations, and U.S. public policy favors free competition.

### Exercise F. Case Hypotheticals and Discussion

(page 160)

1. Yes. Under U.S. law they will have to issue rain checks because there was no indication in the ad that the stock was limited and the ad did not state “no rain checks issued.” Student resource for information about law in other countries.
2. No. In consumer protection law, however, if an ad is placed that is sim-

ply a lure to get customers into the store and reasonable stock is not on hand, the store could be sued or fined. The difference lies in the fact that in the second ad, there was notice to the customers that the offer was limited to stock that was in the store.

### Exercise G. Role Play

(page 162)

We've given a sample simplification of U.C.C. §2 207. You may want to elicit other possibilities from the students before they begin the role play.

Sample answer:

U.C.C. §2-207

- (1) An offer is accepted if acceptance is sent within a reasonable time, even if the acceptance contains additional or different terms, unless the acceptance requires consent to the additional or different terms.
- (2) Additional terms are proposals for additions to the contract. Between merchants the proposals become part of the contract unless (a) the offer has limited acceptance solely to the terms of the offer; (b) the terms materially alter the contract; or (c) the offeror has objected or objects to the terms within a reasonable time after notification.
- (3) You do not have to have a written sales contract if conduct of the parties establishes the fact that there is a contract. The terms of the contract are based on writings that both parties agree to, plus additional terms that can be added under other sections of the U.C.C.

Client Explanation: Audience analysis is involved here. The students should be aware that explanations to clients will vary depending upon the client's level of legal expertise. You can't offer the same explanation to each client.

Sample explanation for a merchant client with limited legal knowledge: Since you are in the business of selling goods, any changes in a contract that are minor become part of the contract unless acceptance to the changes is required. You can avoid this by stating in the offer that changes are unacceptable, or you can object to the changes once you become aware of them.

Additionally, a contract can be implied through your conduct even though there is no written contract. Terms of the contract will be based on writings that you have agreed to and additional terms that can be added under other sections of the U.C.C.

### Consideration (page 162)

This is a difficult area for most students whether from a common or civil law system. The instructor should decide how much time to spend on consideration. Additional materials are included here for your use.

Excerpt from *Hamer v. Sidway*, 124 N.Y. 538, 27 N.E. 256 (1891)



The defendant [executor of the uncle's estate] contends that the contract was without consideration to support it, and, therefore, invalid. He asserts that the promisee by refraining from the use of liquor and tobacco was not harmed but benefited; that that which he did was best for him to do independently of his uncle's promise; and insists that it follows that unless the promisor was benefited, the contract was without consideration, a contention which, if well founded, would seem to leave open for controversy in many cases whether that which the promisee did or omitted to do was, in fact, of such benefit to him as to leave no consideration to support the enforcement of the promisor's agreement. Such a rule could not be tolerated, and is without foundation in the law. The Exchequer Chamber, in 1875, defined consideration as follows: "A valuable consideration in the sense of law may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other." Courts "will not ask whether the thing which forms the consideration does in fact benefit the promisee or a third party, or is of any substantial value to any one. It is enough that something is promised, done, forborne, or suffered by the party to whom the promise is made as consideration for the promise made to him." Anson's Prin. of Con. 63.

....

Pollock, in his work on contracts, page 166, after citing the definition given by the Exchequer Chamber already quoted, says: "The second branch of this judicial description is really the most important one. Consideration means not so much that one party is profiting as that the other abandons some legal right in the present or limits his legal freedom of action in the future as an inducement for the promise of the first."

Now, applying this rule to the facts before us, the promisee used tobacco, occasionally drank liquor, and he had a legal right to do so. That right he abandoned for a period of years upon the strength of the promise of the testator that for such forbearance he would give him \$5000. We need not speculate on the effort which may have been required to give up the use of those stimulants. It is sufficient that he restricted his lawful freedom of action within certain prescribed limits upon the faith of his uncle's agreement, and now having fully performed the conditions imposed, it is of no moment whether such performance actually proved a benefit to the promisor, and the court will not inquire into it, but were it a proper subject of inquiry, we see nothing in this record that would permit a determination that the uncle was not benefited in a legal sense. . . .



### Exercise H. Analysis

(page 162)

1. The nephew's forbearance. He had a legal right to drink, smoke, swear, and gamble, which he then did not do.
2. Consideration must be legal. If the nephew has no legal right to do those things in 2007, then his forbearance would not be consideration.

## Exercise I. Listening and Writing

(page 163)

2.

Date	D & G Stout (General)	Bacardi	National
April	wholesale distributor of liquor in Indiana	liquor manufacturer using General as distributor	another wholesale liquor distributor in Indiana
July 8	enters negotiations with National for sale of General to National		
July 9		<b>promises to continue to use General as a distributor</b>	
July 22			negotiations finalized with General
July 22	tells Bacardi that they intend to reject National's offer	Bacardi again assures General that the product line will remain with General.	
July 23 AM	rejects National's offer		
July 23 PM		Bacardi decides to withdraw line from General.	
July 30	<b>learns of Bacardi's decision to withdraw its product line from their distributorship</b>		
August 3	loses another product line, in part due to Bacardi's withdrawal of its products		
August 6			enters into negotiations to buy General
August 14	<b>executes a contract with National selling at \$550,000 below the price agreed to in mid-July</b>		
November	files suit against Bacardi		

## Listening Script

Two attorneys are reviewing the facts in the Bacardi case.

*John:* Angela, let's go over the dates on this Bacardi case one more time. I've made up a time chart, but some of the dates appear to be missing.

*Angela:* Fine, I've got the file right here. I was just drafting the complaint.

*John:* Okay, up until July 9th, I have the complete information. What happened on July 9th?

*Angela:* Let's see. On that date, I have Bacardi promising to continue to use General as a distributor.

*John:* Then let's skip to July 30th. What happened then?

*Angela:* Ummmm. That was when General learned that Bacardi intended to withdraw its product line. In other words, General would no longer be the distributor for Bacardi in that region. That must have hurt.

*John:* No doubt. But I think we will be able to build a strong case for them based on detrimental reliance.

*Angela:* I think so, too. Especially considering the case law in this jurisdiction. Any more dates you want to verify?

*John:* Just one more. What happened on August 14th?

*Angela:* That's the day General executed a contract with National selling at \$550,000 below the price they had agreed to in mid-July. A lot of money to lose.

*John:* Yeah. Though I think we'll be able to recover it for them.

*Angela:* I'm pretty certain of that also. We have a strong case.

3. Is Bacardi responsible for the loss suffered by General's reliance on Bacardi's promise to continue using General as a wholesaler?
4. Student opinion. Any answer, as long as supported, is acceptable.
5. Listening Script

The appellate court remanded the case to the district court for trial on General's allegations. However, the court stated that under Indiana law, it felt that Bacardi's promise was of a type upon which General could have relied. On remand, the district court found that General's reliance on Bacardi's promise was reasonable.

Student opinion/resource. Any answer, as long as supported, is acceptable.

### **Exercise J. Case Hypotheticals and Discussion**

(page 166)

1. Go through the elements of specific performance with the students.
  - Is the property unique? The trial court thought so.
  - Will monetary damages be sufficient?
  - It is not a personal services contract.
  - We don't know what the hardships to the parties might be.
2. Since Klein made offers on two other G-IIs, the uniqueness of the plane is questionable. The court of appeals held that the plane was not unique even though only three comparable planes existed. Under the facts in this case (the other planes had been offered to Klein), the court found that monetary damages could sufficiently remedy the situation and declined to grant specific performance.
3. If the property had been owned by a famous person, then that would increase its uniqueness factor. In that case, monetary damages might not be sufficient.

### **Exercise K. Legal Drafting**

(page 169)

There is no one right answer to the redrafting of the contract. In terms of language practice, one of the best exercises is to have the students turn in their copies of the rewritten contract and make overheads of language problem areas that were "created" through the redrafting or problems that weren't corrected.

A sample corrected version is included for your use. In the sample version assumptions were made based on what the parties most likely intended. However, other variations are possible.



## AGENCY AGREEMENT

THIS AGREEMENT, made and entered into as of 15 June, 1998 by and between Dominican Manufacturing, Inc., Principal, and Singh Engineering, Inc., Agent.

Principal is a company incorporated under the laws of France and with its principal place of business in Toulouse, France; and Agent is incorporated under the laws of India and has its principal place of business at Mumbai, India.

The Principal produces and exports mineral drilling equipment and other products as set forth and specified in Appendix 1 ("Products"); and

The Agent desires and possesses the capacity, knowledge, and capability to market and sell the Products in India and Sri Lanka ("Territory").

The Parties have agreed as follows:

### 1. APPOINTMENT

1.1 The Principal appoints the Agent as the exclusive sales agent in the Territory.

### 2. RIGHTS AND DUTIES

2.1 The Agent shall promote the sale of the Products.

2.2 The Agent shall not solicit or negotiate contracts for sale of the Products to customers outside the Territory or to customers whom he knows or should know are likely, to reexport the Products outside the Territory.

2.3 The Agent shall forward any inquiries for Products to be used outside the Territory to the Principal. The Principal may extend to the Agent written approval to handle such inquiries. If such approval is granted, the Agent shall ascertain the ultimate destination of the Products. The Agent shall not quote or furnish any information received under this Agreement to the prospective client without prior written receipt of the Principal's approval.

2.4 The Principal is entitled to revise its list of Products at any time, either adding or deleting items from the list. The revisions shall be effective upon Agent's receipt of notification of the changes. If, however, the Principal stops production of a product or a production line, the change shall be effective upon stopping of the line and not upon receipt of notification by the Agent.

2.5 The Principal reserves the right, at its sole discretion, not to accept an order. However, the Principal shall assist the Agent in the performance of its duties by informing the Agent on a continuous basis of current delivery terms and of changes in expected delivery dates.

2.6 The Principal shall inform the Agent within 10 working days whether it accepts the orders forwarded by the Agent.

2.7 The Principal shall furnish the Agent with price lists and catalogues and shall notify the Agent within 5 working days of any changes thereto.

3. COMMISSIONS

3.1 The Principal shall pay the Agent commissions which it is entitled to in accordance with the provisions set forth in Appendix 2.

3.2 The Principal shall calculate and pay commissions quarterly based on a calendar year. Commission shall be calculated based on Products which have been delivered to and paid in full by the customer within the quarterly period under consideration. Principal shall pay the Agent within 30 days following completion of the calculations.

Appendix 2  
COMMISSIONS

For sales of Products listed in Appendix 1, Agent shall be paid commissions based on the following schedules:

- When Agent completed the sale alone or with the Principal: An ex works price of 10%.
- When sales were made in the Agent's Territory by the Principal, its Affiliate Companies, or regularly appointed agents or representatives: 50% of the commission payable to the Principal by its Affiliate Companies or its Appointees.
- When orders are obtained from third parties outside the Agent's Territory for the delivery of the Products into the Agent's Territory: one-third of the Agent's 10% ex works commission.