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Commercial Agreements

If we decide that the invention can be protected and has some commercial prospects then we may offer you a Commercial Agreement. The Agreement will of course be specific to each invention, but the general terms and conditions will be similar. If you are used to commercial negotiation then we apologize if what follows seems obvious to you. However if you haven't been through this kind of process before the following comments may help. They are not intended to deter you. We believe that being open and direct is much better than pretending that it will all be easy.

The Commercial Agreement defines what each party to the Agreement has to do and what benefits they will get from the Agreement. The terms of the Commercial Agreement are quite formal. We know that this may seem daunting so we include a summary of the key points below. We also encourage you to seek legal advice if you are at all unsure of what you are doing.

It is important to recognize that if you enter into agreements with commercial organizations you will have important obligations to fulfil in return for any rewards that you might receive. If we are to act on your behalf we need to be able to assure the people that we talk to that we can deliver on our promises on your behalf. Before any commercial agreement is finally signed all parties are likely to have invested considerable time and effort in the process. It can take many months. This can be quite stressful, especially if you are not used to commercial negotiation. It can all seem very difficult and frustrating.

It can also be the case that after negotiations start you get approached by others who may make alternative offers or suggestions for alternative courses of action. In such circumstances it can lead to conflict if all the parties are not acting in good faith. Whilst you should always consider any serious and valuable offers it is usually necessary for good faith negotiations to succeed for all parties to commit in principle quite a long time before the final documents are signed and our Agreement reinforces this. Anyone who makes promises of easy terms or unusually attractive financial benefits is unlikely to be acting in good faith and ultimately there will be a catch.

We are frequently asked to soften or change the terms of our Agreements because they set out the inventor's obligations very clearly. We will always endeavour to explain the reasons for them, but they have been based on sound legal advice and we will be very reluctant to change them. It is better to be precise about obligations rather than be vague and have an Agreement that could be challenged later. Agreements with third-parties are likely to contain similar formal terms and we believe that it is better to get them clear at the outset rather than come as a last minute surprise.

All negotiations or commercial agreements carry a degree of risk for all parties. The Inventor wants to be sure that they are getting properly rewarded and the purchaser of the idea wants to make sure that they really do have all the information and support from the Inventor. We want to make sure that all the work that we put in is also rewarded. The hardest decision that the Inventor has to make is to give up the rights in their idea and this can be very tough to do. It's important to understand that being rewarded almost inevitably means giving up control.

The summary below is an outline of some of the key terms contained within our standard commercial agreement. The summary will not form part of any legal agreement that might exist in the future. It is not intended to be a substitute for reading any actual Commercial Agreement in full which you are strongly advised to do. Nor is it intended to be a substitute for specific legal advice and you are advised to take your own such advice on the implications of any Agreement that you receive from us. We've included a brief explanation for the reason for each item in the square brackets.



SUMMARY OF KEY POINTS OF THE COMMERCIAL AGREEMENT

Purpose of the Agreement

The purpose of the Agreement is for you to formally appoint us as your sole and exclusive representative with respect to the obtaining of Commercial Benefits from the Invention. Please note that we are not appointed as your agent and are not entitled to sign contracts with respect to the Invention on your behalf. Subject to the terms of the Agreement, you retain ultimate control of the Invention and its exploitation.

Main Features

- During the term of the Agreement you are not entitled to appoint any other agent, distributor, franchisee or any other person for the purpose of seeking Commercial Benefits from the Invention. In return, we are under an obligation to use our reasonable endeavours to find Commercial Benefits from the Invention. [*We cannot negotiate with other people in good faith unless we have this commitment. If we don't make reasonable efforts to find a market for your idea then the agreement would end.*]
- As your representative we will be involved in all negotiations with respect to seeking Commercial Benefits from the Invention. [*We can't help you properly and fulfil our obligations unless we have all the facts*]
- The Agreement contains certain obligations upon you to assist us with the promotion of the Invention and to protect the intellectual property rights in the Invention. [*We need to know that you will support us with explanations and demonstrations if they are needed and that you will remain in a position to assign or licence your intellectual property during the agreement, for example by keeping patents valid. In extreme circumstances you give us the authority to act on your behalf if failure to do so would be imprudent*]
- The term of the agreement is for an initial term of 3 years which is extended until the end of the last of any Contracts entered into during the Term of the Agreement. [*It can take a long-time to get inventions to market. Two years is not unusual and there may be several separate contracts during the life of the Invention*]
- We are entitled to one third commission or equity (unless otherwise agreed) in respect of any Contracts entered into with respect to the Invention. The precise details of the circumstances in which we are entitled to Commission are contained in the full agreement and you should read them carefully. [*Our initial evaluation processes for Inventors are highly subsidised so they can be available to the maximum number. Our financial structure is arranged so that the successful inventions pay for this. We believe that this percentage is still highly competitive when compared with alternatives*]
- You will remain ultimately responsible for obligations to third parties in respect of the Invention and will cover us for any liabilities which we incur if you fail to follow these obligations. [*The Invention always remains your property until you sell it and you remain responsible for any claims that you make about it. For example that you really do own the Invention. Proving that it works or that it will be valuable is not the same thing, that risk may be passed to the purchaser of the idea*]
- You make certain warranties to us for example that you own the intellectual property rights in the Invention, that you are not aware of any reasons why the Invention may not be exploited with respect to licences, registrations etc, and you have not entered into any agreements with any third party with respect to Commercial Benefits relating to the Inventions nor are you in any negotiations to do so. If any of these are untrue you should let us know prior to signing the Agreement. [*Obviously any of these things would make any commercial negotiations pointless and leave us open to costs if we deliberately mislead people and if we are deliberately misinformed we may seek to recover our costs*]
- Whilst we will use reasonable endeavours to seek Commercial Benefits from the Invention for you, we cannot, for obvious reasons, guarantee whether or not any such Commercial Benefits will be obtained. [*It is in our joint interests that the Invention succeeds, but we can't make other people sign agreements. It may also happen for example that the Invention is overtaken by a better product on the market*]