

**Federal Austrian Law regarding the legal status of self-employed Commercial Agents
(Law on Commercial Agents - HVertrG 1993)**

Definition and activity of a Commercial Agent

Definition of the term self-employed Commercial Agent

§ 1

(1) A Commercial Agent shall mean a person who has been continuously entrusted by another person (hereinafter called the „Principal“) to negotiate or conclude business, unless concerning immovable property, on behalf of and in the name of the Principal and who performs this activity on a self-employed and commercial basis.

(2) The Principal may also be a Commercial Agent.

(3) The term “Trade Agent” may also be used instead of the term “Self-Employed Commercial Agent.”

Conclusion of business by the Commercial Agent

§ 2

(1) The Commercial Agent may only conclude business on behalf of and in the name of the Principal if he is authorized to do so.

(2) If a Commercial agent who only has authority to negotiate business concludes a contract with a third party in the name of the Principal, the said Principal will be deemed to have authorized the transaction if he does not notify the third party that he refuses the transaction immediately after he has become aware of conclusion of this business.

Authority of the Commercial Agent

§ 3

(1) The Commercial Agent may only accept payments for the Principal if he is authorized to do so.

(2) If the authority includes the entitlement to accept payments, the Commercial Agent will only be deemed to be authorized to receive payments which are in accordance with the agreed conditions. Such entitlement shall not include the authority to change the terms of payment agreed on conclusion of the transaction, and in particular the right to settle disputes or grant discounts.

(3) If the activity of the Commercial Agent includes travelling, he shall also be authorized to receive the purchase price arising from the sales concluded by him or to authorize payment deadlines.

(4) Notification of defects, statements that a product is available and other statements by means of which customers protect their rights may also be made to the Commercial Agent.

(5) The Commercial Agent shall be entitled to exercise the Principals´ right to ascertain the condition of the goods; in doubt he shall not be entitled to dispose of the goods unless the condition thereof makes it urgently necessary.

(6) A third party has to accept the assertion against him of restrictions on the authority of the commercial Agent if he was, or must have been, aware of such restrictions.

Rights and obligations of the Principal and of the Commercial Agent

Written document

§ 4

The Principal and the Commercial Agent shall be obliged to provide the other party, upon request, with a signed document which contains the text of the agency agreement which is valid at that time.

Obligations of the Commercial Agent

§ 5

The Commercial Agent shall be obliged to endeavour to negotiate or conclude business. In performing his activities, he must look after the Principal's interests, showing the care of a diligent businessman, and shall, in particular, be obliged to submit the Principal the necessary information and to inform him of every transaction which he has concluded for the Principal.

Obligations of the Principal to support

§ 6

(1) The Principal must support the Commercial Agent in the exercise of his activity.

(2) The Principal must in particular:

1. place the necessary documentation at the disposal of the Commercial Agent and provide him with all the information necessary for the performance of his activity,
2. inform the Commercial Agent immediately if he foresees that the amount of business will be much smaller than the Commercial Agent might have expected from the circumstances, and in particular on the basis of the previous business or the information provided by the Principal,
3. inform the Commercial Agent immediately of acceptance or refusal of a transaction which has been negotiated or concluded without authorization or of the non-execution of business negotiated or concluded by him.

Prohibition on the acceptance of recompense

§ 7

(1) In the absence of any contrary practice in the trade, the Commercial Agent may not, without the consent of the Principal, accept recompense from the third party negotiating or concluding business with the agent.

(2) The Principal may require the Commercial Agent to submit the unlawfully received recompense and to pay for damages exceeding this amount.

Remuneration, commission

§ 8

(1) Remuneration of the Principal may take the form of a commission or another consideration.

(2) Unless otherwise agreed, commission is to be due to the commercial Agent as remuneration for each transaction resulting out of his activity. In the absence of any contrary trade practice, no right to commission is acquired simply by naming the third party.

(3) In case of doubt, the Commercial Agent is entitled to commission for business concluded without his direct intervention during the period of existence of the contractual relationship between the customers, assigned to him or supplied by him, and the Principal.

(4) If the Commercial Agent is expressly appointed as a sole agent for a certain area or for a certain group of customers, there will also be due to him, in case of doubt, commission for business concluded without his intervention during the period of existence of the contractual relationship by the Principal or for the latter with the customers pertaining to the area or to the group of customers assigned to the Commercial Agent.

Accrual of the claim for commission

§ 9

(1) The claim for commission shall arise when the business negotiated between the Principal and the third party becomes legally valid, if and to the extent that

1. the Principal has performed the transaction or
2. the Principal should have performed the transaction under the contract with the third party or
3. the third party has performed the transaction by making payment.

(2) The claim for commission shall arise at the latest when the third party has performed his part of the business or would have done so if the Principal had performed his part of the transaction.

(3) The claim for commission shall cease to be valid if and to the extent that it is ascertained that the contract between the third party and the Principal is not being performed and this is due to circumstances which are the fault of the Principal. In case of delayed payment of the third party, the Principal must, however, demonstrate that all reasonable steps have been taken to make the third party effect payment.

Level of commission

§ 10

(1) In the absence of any other agreement, the level of commission corresponds to the usual rates at the seat of the Commercial Agent.

(2) Discounts which the Principal has granted to the third party may not be deducted when the commission is calculated unless agreed when the business was concluded or there is a trade practice to this effect. Discounts for payment in cash are under no circumstances to be deducted; this also applies to incidental expenses, in particular to freight, packaging, customs duties or taxes unless the incidental expenses have been specially charged to the third party. Turnover tax which is shown separately in the invoice solely because of the effective tax regulations is not considered to have been specially charged.

Commission after termination of the contractual relationship

§ 11

(1) Commission shall be due to the Commercial Agent for business concluded after termination of the contractual relationship if and to the extent that

1. the transaction is mainly attributable to his efforts during the contractual period and conclusion occurred within a reasonable period after termination of the contractual relationship or
2. a binding offer by the third party was received by the Commercial Agent or the Principal before the contractual relationship was terminated.

(2) A subsequent Commercial Agent has no claim for commission if this is due to his predecessor, unless the circumstances justify sharing of the commission between him and his predecessor.

Prevention of earnings

§ 12

(1) If the Commercial Agent is prevented by the Principal, contrary to the terms of the contract, from earning commission to the extent agreed or to the extent to be expected under the agreement, appropriate indemnity will be due to him.

(2) The same shall apply if prevention is due to sale during the contractual relationship by the Principal of his enterprise or distribution by a joint sales outlet.

Reimbursement of expenses

§ 13

(1) The Commercial Agent may not demand reimbursement of general costs and expenses incurred during business activity.

(2) On the other hand, unless otherwise agreed or contrary trade practice, the Principal must reimburse him exceptional expenses resulting out of acting on the instructions of the Principal.

Statements of account and payment of advances

§ 14

(1) Statement of account for commission is to be made at the latest on the last day of the month following the quarter in which the claim for commission arose. If the contractual relationship ends before the expiry of one calendar quarter, this statement is to be made at the latest on the last day of the month after which the claim arose. Such statement must contain all the information necessary for calculation of the commission.

(2) The Commercial Agent may request an advance within his claims which have arisen for commission and expenses.

Due date of the commission

§ 15

The claim for commission shall become due on the day on which statement of account is to be made according to the agreement or according to law.

Book extracts and inspection of the books

§ 16

(1) The Commercial Agent may require the Principal to supply him with a book extract and any other information enabling him to check the amount of the commission due to him.

(2) If the Commercial Agent is able to furnish prima facie evidence that the extract from the books is incorrect or incomplete or that the Principal refused a book extract, he may, even before the law suit, plead for submission of such an extract before the district court for the administrative district in which the account books are situated; he may at the same time plead for the Principal to be instructed to provide additional information which will permit a full calculation of the claim which the Commercial Agent is entitled to.

(3) The contents of the account books are, insofar as they concern the claims of the Commercial Agent, to be inspected by both parties together, an extract has to be prepared if necessary. The rest of the contents of the books are to be disclosed to the judge to the extent that this is necessary to ensure that they are being kept properly.

(4) If the Principal objects to personal inspection by the Commercial Agent and the parties are unable to agree on a representative, the judge may order that the books be inspected by an expert appointed by the court.

(5) Furthermore, the provisions of the Code of Civil Procedure on the preservation of evidences (§§ 384 to 389 ZPO) accordingly apply.

(6) The limitation period governing the Commercial Agent's claims shall continue to run during proceedings according to paras 1 to 5, but shall under no circumstances come to an end until three months after the proceedings have reached a final decision and the demands for an extract from the books, inspection of the books and additional information have been met.

Profit sharing

§ 17

If it is stipulated that the Commercial Agent's remuneration shall wholly or partly be composed of a proportion of the profits resulting out of all or some of the transactions or that the profits shall determine the remuneration in some other way, statement of account is to be made after the end of the financial year on the basis of the annual accounts. §§ 15 and 16 are to apply accordingly.

Statute of limitations

§ 18

(1) All claims arising out of the contractual relationship between the Principal and the Commercial Agent are subject to a limitation period of three years.

(2) In the case of claims which are included in the statement of account, the limitation period shall commence at the end of the year in which the statement has been made, but in the case of claims which are not included in the statement, the limitation period shall commence at the end of the year in which the contractual relationship is terminated. In the case of claims which were only to be stated after termination of the contractual relationship, the limitation period shall commence at the end of the year in which the statement should have been made.

(3) If the claim is made to the Principal, the limitation period shall be suspended until the written reply of the Principal has been received.

Right of retention

§ 19

The Commercial Agent is entitled to the commercial right of retention, also with regard to the samples supplied to him by the Principal, under the conditions of §§ 369 and 370 HGB [Commercial Code]. § 369 para 3 HGB does not prevent the right of retention of the samples if the contractual relationship is terminated. The Commercial Agent shall be obliged, however, to return the samples without delay if the Principal pays into court an amount which corresponds to the value of the samples or the amount of the claim, or provides security for this sum in another way.

Termination of the contractual relationship

Expiry of the contract

§ 20

A contract concluded for a specific period shall be expired at the end of the period for which it was entered into. If the contractual relationship is continued by both parties after expiry of the agreed period, it shall be deemed as extended for an indefinite period.

Notice period

§ 21

(1) If the contract is concluded for an indefinite period, it can be terminated by either party with observation of a one-month period of notice in the first year of the contract; after commencement of the second year of the contract, the period of notice shall, however, be at least two months, at least three months after commencement of the third year of the contract, at least four months after commencement of the fourth year of the contract, at least five months after commencement of the fifth year of the contract and at least six months after commencement of the sixth year of the contract and in subsequent contract years. When calculating the duration of the period of notice for contracts which were initially entered into for a specific period, but which have been extended for an indefinite period under § 20, the duration of the contract for a specific period has to be taken into account.

(2) An Agreement to observe periods shorter than those specified in paragraph 1 shall be invalid.

(3) If the parties agree on longer periods than those stipulated in paragraph 1, the period to be observed by the Principal may be not shorter than the period to be observed by the Commercial Agent; if this provision is not complied with, the longer period to be observed by the Commercial Agent shall also apply to the Principal.

(4) Unless otherwise agreed, the end of the period of notice must coincide with the end of a calendar month.

Premature termination

§ 22

(1) The agency contract may be terminated by either party at any time, without observance of a period of notice, for important reasons.

(2) The following is in particular to be deemed as an important reason which entitles the Principal to terminate the contractual relationship prematurely:

1. if the Commercial Agent becomes unable to exercise his activity;
2. if the Commercial Agent is guilty of an action which makes him seem unworthy of the trust of the Principal, in particular if he accepts recompense contrary to § 7, if he submits orders to the Principal which have not been declared or if he otherwise misleads him with regard to important commercial matters;
3. if the Commercial Agent neglects or refuses to act for the Principal for a considerable period in view of the circumstances, or if he violates other important contractual provisions;
4. if the Commercial Agent is guilty of violence against or substantial defamation of the Principal;
5. if the Commercial Agent is declared bankrupt.

(3) The following is in particular to be deemed as an important reason which entitles the Commercial Agent to effect premature termination of the contractual relationship;

1. if he becomes incapable of exercising his activity or
2. if the Principal
 - a) improperly reduces or withholds the commission due to the Commercial Agent or violates other important contractual provisions or
 - b) is guilty of violence against or substantial defamation of the Commercial Agent, or
 - c) ceases to be active in the line of business in which the Commercial Agent mainly operates.

Claims in the event of premature termination

§ 23

(1) If one of the parties is responsible for premature termination of the contractual relationship under § 22, the other party shall be entitled to demand indemnity resulting out of it. If one party terminates the contractual relationship prematurely in the absence of a good reason, the other party may demand performance of the contract or indemnity resulting out of it. This shall also apply if the contractual relationship has been terminated contrary to § 21.

(2) If both parties are responsible for premature termination of the contractual relationship, with or without a good reason, the judge must decide at his discretion whether and how much indemnity should be paid.

Compensation claim

§ 24

(1) After termination of the contractual relationship, the Commercial Agent shall be entitled to make an appropriate compensation claim if and to the extent that

1. he has brought the Principal new customers or has significantly increased the volume of existing business,
2. it is to be expected that the Principal or his legal successor will be able to derive considerable benefits from this volume of business even after termination of the contractual relationship, and
3. payment of compensation is equitable having regard to all the circumstances and, in particular, the commission lost by the Commercial Agent on the business concluded with the customers in question.

(2) Entitlement to make a compensation claim shall also exist if the contractual relationship ends because of the death of the Commercial Agent and the conditions specified in paragraph 1 apply.

(3) Compensation shall not exist if

1. the Commercial Agent has terminated the contract under the period of notice or has prematurely terminated the contractual relationship unless circumstances which are the fault of the Principal are the reason therefore, even if they do not constitute an important reason as specified in § 22, or the commercial Agent cannot be expected to continue his activity because of age, illness or infirmity, or
2. the Principal has terminated the contract under the period of notice or has prematurely terminated the contractual relationship because of the culpable behaviour of the Commercial Agent which constitutes an important reason under § 22 or
3. the Commercial Agent assigns the rights and obligations which he has under the contract to a third party in accordance with an agreement with the Principal on the occasion of termination of the contract.

(4) In the absence of an agreement more favourable to the Commercial Agent, the compensation claim shall not exceed the annual remuneration which is calculated from the average of the past five years. If the contractual relationship has lasted less than five years, the average for the entire duration of the contract shall prevail.

(5) The Commercial Agent shall lose his entitlement to claim compensation if, one year after termination of the contract, he has not informed the Principal of asserting his rights.

Competition clause

§ 25

Any agreement which results in limitation of the commercial activity of the Commercial Agent after the termination of the contractual relationship shall be invalid.

Bankruptcy of the Principal

§ 26

(1) The contractual relationship shall be terminated if the Principal is declared bankrupt. The Commercial Agent shall, however, be obliged, in the event of imminent danger, to continue his activity until other provisions can be done.

(2) If the contractual relationship is terminated because of bankruptcy before the expiry of the specific period for which it was entered into, or if a period of notice was agreed in the contract, the Commercial Agent shall be entitled to demand indemnity for the damage caused to him.

Legal Relationships of the Insurance Agents Applicability to Insurance Agents

§ 26a

The provisions set out in this Federal Austrian Act apply to the brokerage and conclusion of contracts of insurance by insurance agents subject to §§ 26b through 26d.

Special conditions for insurance brokering

§ 26b

(1) § 8 paras 3 and 4 do not apply to insurance brokers.

(2) Diverging from § 9, the insurance agent is entitled to a commission upon the entry into legal force of the brokered transaction if and to the extent that the policyholder has paid the premium owing or would have had to pay it if the insurer had fulfilled its obligation. If the insurer has justified reasons for terminating the contract of insurance or reducing the amount of the insurance premium, the commission entitlement is not due and/or it is reduced.

(3) §§ 6 paras 5 and 30 and para 3 of the Brokers Act [*Maklergesetz*] apply to the legal relationship between the insurance agents among each other and to the policyholder.

(4) Diverging from §§ 14 and 15, the insurer must settle the commission claims by no later than one month after the claim arises. The due date for payment is that day on which the claims are accounted or are to be accounted.

Subsequent and support commission

§ 26c

(1) The insurance agent is also entitled to the commission for the contracts of insurance he has brokered or considerably extended (subsequent commission) after the contractual relationship with the Principal has ended if and to the extent that the policyholder continues to pay the premium owing or would have to continue to pay if the insurer had fulfilled its obligation. If the insurer has justified reasons for terminating the contract of insurance or reducing the amount of the insurance premium, the subsequent commission entitlement is not due and/or it is reduced correspondingly. § 24 para 3 applies accordingly.

(2) If the insurance agent is obligated according to a written agreement with the Principal to support policyholders and he receives a commission (support commission) or other corresponding recompense for doing so, there is no entitlement to continued payment of that commission or recompense after the contractual relationship between the insurance agent and the Principal has terminated.

(3) The amount of the support commission or other recompense is likewise to be arranged in writing. If there is no such arrangement and if the insurance agent is obligated in accordance with para 2 to support policyholders, a reasonable support commission or recompense is deemed to have been arranged.

(4) The Principal is entitled to satisfy the claim for subsequent commission by way of a partial payment. Calculating that partial payment is to be based on the average remaining term of the contracts, whereby extraordinary right of termination according to § 8 para 3 of the Insurance Act and other grounds for dissolving a contract of insurance are to be taken into consideration.

Insurance agent's claim for settlement

§ 26d

If and to the extent that no claims exist according to § 26c para 1, the insurance agent is entitled to claim a settlement pursuant to § 24 with the proviso that the brokering of new contracts of insurance or substantial extension of extant contracts takes the place of providing new customers or substantially extending extant business connections.

Applicability of legislation

Mandatory provisions

§ 27

(1) The provisions of §§ 9 paras 2 and 3, 12 paras 1, 14, 15, 16 paras 1 and 2, 21 paras 1 and 3, 23, 24 and 26 para 2 may, in advance by the contract, be neither avoided nor limited to the detriment of the Commercial Agent.

(2) The provisions of §§ 4, 5 and 6 may, in advance by the contract, be neither avoided nor limited, either to the detriment of the Commercial Agent or to the detriment of the Principal.

Relationship with other legislation

§ 28

(1) The provisions of this Federal Austrian law do not apply to the negotiation and conclusion of insurance transactions, to the legal relationships between employers and employees covered by the Act on Employees, BGBl. [Federal Law Gazette] No. 292/1921, in the version respectively valid, or to the legal status of commercial brokers within the terms of § 93 HGB.

(2) Unless otherwise provided in this Federal Austrian law, the provisions of the HGB and the ABGB [General Civil Code], in their respectively valid versions, are to be applied to the contractual relationship governed by this Federal Austrian law.

Coming into effect and executive provision

§ 29

(1) This Federal Austrian law shall come into force on 1 March 1993.

(2) The Federal Austrian law of 24 June 1921, BGBl. No. 348, concerning the legal status of self-employed Commercial Agents (Law on Commercial Agents) in the version of 4. EVHGB (Introductory Order to the Commercial Code) of 24 December 1938, dRGGBl. I S [Reich Law Gazette] 1999, of the Federal Austrian law of 13 July 1960, BGBl. No. 153, and of the Federal Austrian law of 15 June 1978, BGBl. No. 305, shall cease to apply on 28 February 1993, except for the legislation applying to other negotiators of transactions within the terms of § 29; it shall continue to apply until 31 December 1993 to contracted relationships in existence on 28 February 1993.

(2a) § 5, § 19 and § 28 as amended by the Commercial Law Amendment Act, BGBl. [Federal Law Gazette] No.120/2005, enter into force per January 1, 2007.

(3) The Federal Minister of Justice is entrusted with the execution of this Austrian Federal Law.

(4) §§ 26a through 26d, as well as §§ 27 paras 1 and 28 para 1 as amended by BGBl. [Federal Law Gazette] No 103/2006 enter into force per July 1, 2006. They are to be applied to extant contractual relationships with the exception of § 26c, which is only to be applied to contracts between insurance agents and Principals concluded after December 31, 2006.