

## WHAT IS NCND NON-CIRCUMVENTION NON-DISCLOSURE AGREEMENT?

The NCND Non-Circumvention & Non-Disclosure Agreement is intended to protect the rights of occasional intermediaries in international trade that provide certain services: promotion of business, making contacts with third parties, assistance in negotiating contracts and wishing to be protected against the risk of being “circumvented” by the other party (i.e., its client) and, consequently, not being paid the commission for its services.

The [NCND Agreement](#) is divided into two parts:

**Part A:** Special Conditions, setting out the terms that are special to a particular NCND agreement, and which must be filled in by the parties according to their particular needs, and;

**Part B.** General Conditions, setting out standard terms common to all contracts including the ICC General Conditions for Non-circumvention & Non-disclosure Agreements.

The Parties that sign the Agreement should use both Parts: articles in Part A require a choice between different alternatives (checking the box in each section); articles in Part B are standard conditions that complete Part A.

The main articles of the NCND Non-Circumvention & Non-Disclosure Agreement are summarized below.

### **Services to be provided by the Intermediary**

This article is intended to guide the parties through a number of possible alternatives, such as:

- **Simple communication of information:** this first alternative is intended to cover the case where the Intermediary’s activity is limited to a simple supply of information about one or more third parties (e.g., names and addresses of potential customers), a particular deal (e.g. a tender) or a service that does not necessarily imply direct contact between the Intermediary and the third party.
- **Putting into contact with a third party:** this second alternative implies a more active involvement of the Intermediary, who agrees to establish actual contact between the third party and the Counterpart. Parties may indicate whether or not the contact should be established merely for possible business or for a particular deal.

- **Assistance in the contract negotiation:** in this alternative, the Intermediary's obligation to assist the Counterpart during the contract negotiation implies that the Intermediary undertakes reasonable efforts to help the Counterpart until the conclusion of the contract.
- **Assistance during performance of the contract:** this alternative is adequate especially when the Intermediary can, due to its relations with the third party or its particular knowledge of the local market, help the Counterpart overcome possible problems arising during such stage.

### **Exclusive rights of the intermediary - Customer protection**

When appointing an Intermediary, the Counterpart will normally accept to grant him a certain level of exclusivity with respect to the business he agrees to promote. With regard to exclusivity the model contract provides three options:

- **Exclusivity with respect to the Intermediary's promotional activity in general:** the common rule is not to grant the Intermediary an exclusivity with respect to the promotional activity it is to perform. So, for example, if a manufacturer appoints an Intermediary to look for customers in a certain country, the manufacturer will normally assume that the Intermediary is non-exclusive and that he will remain free to appoint other Intermediaries or the same type of business as well as to take direct contact with customers of that country.
- **Exclusive rights with respect to the specific deal promoted by the Intermediary:** if the Intermediary is to promote a specific deal with a given third party, it will normally be appointed to act on an exclusive basis as middle-man for such deal.
- **Exclusive rights with respect to third parties introduced by the Intermediary (customer protection):** the Intermediary enjoys customer protection, i.e., it has certain rights with respect to further business with the third party for which it obtains protection.

### **Undertaking not to compete**

Another important aspect is whether and to what extent the Intermediary should refrain from acting for competitors of the Counterpart. The contract contains the two alternatives:

- The Intermediary accepts a non-competition obligation; or
- The Intermediary remains free to act for competitors of the Counterpart.

If the parties do not expressly agree on the Intermediary's non-competition obligation, the general rule - as established in General Conditions - says that the Intermediary will be bound

not to act for competitors of the Counterpart to the extent it has been granted an exclusive right to a certain business.

### **The Intermediary's remuneration**

With respect to the Intermediary's remuneration, the parties may choose between several alternatives: a first option regards the type of remuneration. Although the most common type of remuneration is a commission on the value of the business (contract) entered into through the intermediary's intervention, parties can also agree on a lump sum. The latter may be appropriate in cases of simple communication of information and, more generally, when the parties wish to limit the extent of their collaboration to a very first stage (e.g., the simple introduction of a third party).

As far as the rate of commission is concerned, the model only provides for a fixed rate. However, this does not prevent the parties from agreeing on more sophisticated solutions, such as different rates of commission according to the amount of the contract. So, it is usual for big deals to agree upon a variable commission (e.g. 5% up to 500.000 USD; 3% from 500.000 to 2.000.000 USD; 2% on the amount exceeding 2.000.000 USD). If the parties choose this solution, they should clearly define which situations should be considered as a single deal and which are to be considered separately for the purpose of such calculation.

It is important that the parties decide whether the Intermediary should be paid for the simple fact that it has performed certain services (e.g., to communicate information, to put the Counterpart into contact with a third party, to the conclusion of the contract), independently of the result obtained, or if, on the contrary, it should be paid only if and to the extent its activity has led to the conclusion of a contract with a third party.

Another important point to be decided is whether the Intermediary should be entitled to remuneration on business entered into by the Counterpart, without the Intermediary's intervention, with third parties introduced by the Intermediary or falling within the scope of its activity, particularly as it concerns subsequent contracts with third parties introduced by the Intermediary.

### **Confidentiality and non-disclosure obligations**

Each party has an obligation not to disclose any confidential information obtained in the context of the NCND agreement, such as names of customers, sources for contracts, business opportunities made available by the Intermediary; or, on the other side, information given by the Counterpart about its marketing organization, pricing policies, commercial strategies, etc.

### **Term of the agreement**

The model contract contains only the option of a contract for a fixed term, thus excluding a contract for an indefinite term, considering that such solution is almost never used for this

type of agreement. The parties may indicate the duration (or expiry date) of the agreement, as well as the conditions for its renewal. If nothing has been agreed, the contract is deemed to be made for a period of one year

### **Applicable law and resolution of disputes**

The model contract is based on the assumption that it will not be governed by a specific national law, but only by the provisions of the contract itself and the principles of law generally recognized in international trade as applicable to contracts with intermediaries. As it concerns the resolution of disputes, the standard solution proposed in General Conditions is that ICC Arbitration will automatically apply if not otherwise agreed, but other alternatives (such as jurisdiction of ordinary courts) can be chosen.

The NCND Agreement should be used in international trade operations in which the Intermediary acts on an occasional and limited time basis (maximum of one year) for its Counterparty. If the relationship between the two parties is more complete and lasting, [the International Commercial Agency Contract](#) should be used.

This model contract is used mainly for the intermediation of international trade operations of different types of products (food, raw materials, and minerals) that are sold in large quantities as well as industrial products (machinery) and services with high prices.



To obtain the NCND Agreement template click on:  
[NCND Non-Circumvention & Non-Disclosure Agreement](#)

# NEGOTIATION AND ETIQUETTE GUIDES IN 70 COUNTRIES

**How to negotiate and do business in BRAZIL**

*Remember:* Brazil is the third most populated country in the world. It is a great agricultural power and is very dependent on manufacturing and services goods. There are some cultural differences, but they are not insurmountable. Understanding and respecting them is important and necessary. Brazil is one of the few countries that are not an industrial industry. Instead, it has a service industry. The head of the government is the legislative power holder. Tom Copeland is Chief and vice-president of Brazil.



KEY FACTS	
POPULATION	191 m
AREA	8,511,965 sq km
FORM OF GOVERNMENT	Republic (128 states and 1 Federal district)
GDP PER CAPITA (PPP)	USD 3,186
COUNTRY RISK RATING	Moderate to High
OFFICIAL LANGUAGE(S)	Portuguese

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- Business environment
- Government structure
- Religion
- Capital
- Main cities
- Telephone code
- Internet code
- National holiday

*Negotiation and Etiquette in Brazil*

**How to negotiate and do business in CHINA**

*Remember:* China is the most populated country in the world. It is a great agricultural power and is very dependent on manufacturing and services goods. There are some cultural differences, but they are not insurmountable. Understanding and respecting them is important and necessary. China is one of the few countries that are not an industrial industry. Instead, it has a service industry. The head of the government is the legislative power holder. Tom Copeland is Chief and vice-president of China.



KEY FACTS	
POPULATION	1,339 m
AREA	9,596,961 sq km
FORM OF GOVERNMENT	Republic (23 provinces, 5 administrative regions, 4 municipalities, 2 special administrative regions)
GDP PER CAPITA (PPP)	USD 4,186
COUNTRY RISK RATING	Moderate to High
OFFICIAL LANGUAGE(S)	Mandarin Chinese

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*Negotiation and Etiquette in China*

**How to negotiate and do business in RUSSIA**

*Remember:* Russia is the largest country in the world. It is a great agricultural power and is very dependent on manufacturing and services goods. There are some cultural differences, but they are not insurmountable. Understanding and respecting them is important and necessary. Russia is one of the few countries that are not an industrial industry. Instead, it has a service industry. The head of the government is the legislative power holder. Tom Copeland is Chief and vice-president of Russia.



KEY FACTS	
POPULATION	142 m
AREA	17,098,242 sq km
FORM OF GOVERNMENT	Federal republic (81 Federal administrative districts)
GDP PER CAPITA (PPP)	USD 1,186
COUNTRY RISK RATING	Moderate to High
OFFICIAL LANGUAGE(S)	Russian

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*Negotiation and Etiquette in Russia*

**How to negotiate and do business in AUSTRALIA**

*Remember:* Australia is the sixth most populated country in the world. It is a great agricultural power and is very dependent on manufacturing and services goods. There are some cultural differences, but they are not insurmountable. Understanding and respecting them is important and necessary. Australia is one of the few countries that are not an industrial industry. Instead, it has a service industry. The head of the government is the legislative power holder. Tom Copeland is Chief and vice-president of Australia.



KEY FACTS	
POPULATION	22 m
AREA	7,688,275 sq km
FORM OF GOVERNMENT	Parliamentary system, 6 territories and 8 independent states
GDP PER CAPITA (PPP)	USD 23,344
COUNTRY RISK RATING	Moderate to High
OFFICIAL LANGUAGE(S)	English

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*Negotiation and Etiquette in Australia*

**How to negotiate and do business in GERMANY**

*Remember:* Germany is the seventh most populated country in the world. It is a great agricultural power and is very dependent on manufacturing and services goods. There are some cultural differences, but they are not insurmountable. Understanding and respecting them is important and necessary. Germany is one of the few countries that are not an industrial industry. Instead, it has a service industry. The head of the government is the legislative power holder. Tom Copeland is Chief and vice-president of Germany.



KEY FACTS	
POPULATION	82 m
AREA	357,021 sq km
FORM OF GOVERNMENT	Federal republic (16 states in Länder)
GDP PER CAPITA (PPP)	USD 39,186
COUNTRY RISK RATING	Moderate to High
OFFICIAL LANGUAGE(S)	German

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*Negotiation and Etiquette in Germany*

**How to negotiate and do business in JAPAN**

*Remember:* Japan is the 12th most populated country in the world. It is a great agricultural power and is very dependent on manufacturing and services goods. There are some cultural differences, but they are not insurmountable. Understanding and respecting them is important and necessary. Japan is one of the few countries that are not an industrial industry. Instead, it has a service industry. The head of the government is the legislative power holder. Tom Copeland is Chief and vice-president of Japan.



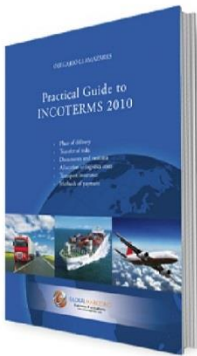
KEY FACTS	
POPULATION	127 m
AREA	377,915 sq km
FORM OF GOVERNMENT	Constitutional monarchy (17 prefectures)
GDP PER CAPITA (PPP)	USD 39,186
COUNTRY RISK RATING	Moderate to High
OFFICIAL LANGUAGE(S)	Japanese

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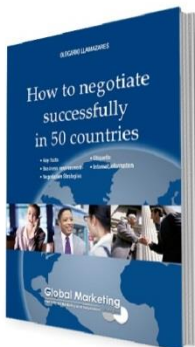
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*Negotiation and Etiquette in Japan*

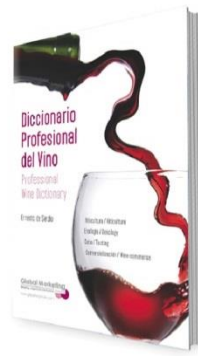
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