Distribution Agreement · Miele × [Distributor]

Distribution · Buyer side · Counterparty: Miele & Cie. KG

OVERALL VERDICT

MEDIUM · Score 74/100

Findings	Liability cap	Termination notice
10 3 high · 4 medium · 2 low · 1 info	**12 months** Of net purchases	**90 days** Miele only
Statutory analogue [2]	VBER non-compete limit [1]	
6 months HGB § 89 after 5 years	**5 years** Art. 5(1)(a)	

Summary

Supplier-drafted German-law distribution agreement for Miele Professional laundry and dishwashing equipment, five-year term, non-exclusive territory. Delivery, force majeure and payment terms are balanced, but three clauses favour Miele: a liability cap at 12 months of net purchases, a 90-day termination for convenience available only to Miele, and a waiver of the distributor's goodwill indemnity that German courts grant by analogy to HGB § 89b [3]. Two further clauses (the post-term non-compete and the limit on online sales) risk falling outside the EU Vertical Block Exemption Regulation 2022/720 and should be corrected for Miele's benefit as much as the buyer's [1]. Redline the three high-severity clauses before signing; the rest can be negotiated in the same round.

Clause risk summary

SEVERITY: INFO

The agreement appoints the distributor as an authorised, non-exclusive dealer for Miele Professional products in one EU member state, with minimum purchase targets, an obligation to run certified after-sales service and a duty to hand over customer data at the end of the term. It is drafted on Miele's standard terms, so German standard-terms control under BGB § 307 applies to every clause that was not individually negotiated [6]. That matters for the buyer: clauses that unreasonably disadvantage the distributor can be void even if signed, but relying on that in a dispute is slower and less certain than fixing them now.

The score of 74/100 reflects a commercially workable contract with a concentrated set of seller-friendly terms. Priorities, in order: liability (§ 12), termination (§ 17) and the post-term indemnity waiver (§ 18).

Clause	Topic	Severity	Ask

§ 12	Liability cap 12 months of purchases	High	Raise to 2x annual purchases; carve-outs
§ 17.2	Termination for convenience, Miele only	High	Mutual; 12-month notice after year 3
§ 18.3	Waiver of goodwill indemnity	High	Delete or price the customer-data transfer
§ 6	Minimum purchase 500 units from year 1	Medium	Ramp 250 / 400 / 500
§ 7.3	List-price changes on 30 days' notice	Medium	90 days; cap at index
§ 10	Warranty and recourse limits	Medium	Keep BGB § 445a recourse
§ 4.2	Post-term non-compete 24 months	Medium	Max 12 months, premises only
§ 5.4	Online sales only via Miele-approved sites	Low	Clarify criteria
§ 15	Force majeure and allocation	Low	Pro-rata allocation
§ 20	German law, courts of Bielefeld	Info	Optional arbitration

Severity reflects buyer-side exposure.

§ 12 Liability · cap at 12 months of net purchases

SEVERITY: HIGH

Clause: Miele's total liability is capped at the net purchase value of the preceding 12 months; indirect and consequential loss, lost profit and recall costs are excluded.

Issue: In year one the cap equals the invoice value of the goods, while the distributor's real exposure (customer refunds, replacement installations in hotels or care homes, downtime claims) can exceed it. Under German law, liability for intent and gross negligence and for injury to life, body or health cannot be excluded or capped in standard terms, and a cap on breaches of material contractual obligations must cover the foreseeable damage typical for the contract [5]. Liability under the Product Liability Act cannot be excluded or limited in advance either [10]. A flat 12-month cap with a blanket exclusion of lost profit is therefore partly unenforceable, and the uncertainty works against both sides.

Redline: Cap at 2x annual net purchases, minimum €1M per year. Carve out intent, gross negligence, injury, ProdHaftG claims, breach of confidentiality and IP indemnity. Name recall and field-action costs as recoverable direct damage.

§ 17 Termination · convenience right for Miele only

SEVERITY: HIGH

Clause: Miele may terminate without cause on 90 days' notice at any time; the distributor may terminate only for cause.

Issue: A distributor that has invested in service technicians, demo stock and certification can lose the line within one quarter. For commercial agents, HGB § 89 sets minimum notice periods that rise from one month in the first year to six months after five years, and they may not be shorter for the principal than for the agent [2]. German courts extend agent-law protections by analogy to authorised dealers integrated into the supplier's sales organisation, as

the indemnity case law shows [4], and the service and reporting duties in this agreement create that integration. A one-sided 90-day right is therefore exposed under BGB § 307 [6].

Redline: Make convenience termination mutual and exclude it in the first three years. Then require 12 months' notice, Miele's buy-back of saleable stock and demo units at net invoice price, and continued spare-parts supply for the installed base. Given that ecodesign rules oblige manufacturers to keep key washing-machine parts available for ten years, ask for parts supply to the distributor on the same horizon [11] [12].

§ 18 Post-term · indemnity waiver and customer data

SEVERITY: HIGH

Clause: On expiry the distributor must transfer its customer list and service records to Miele; § 18.3 states that no compensation is owed for customers or goodwill.

Issue: The German Federal Court of Justice grants authorised dealers a goodwill indemnity by analogy to HGB § 89b when two conditions are met: integration into the supplier's sales organisation and a contractual duty to transfer the customer base so the supplier can use it at once [3] [4]. This contract meets both. For commercial agents the indemnity cannot be excluded in advance and is capped at one year's average remuneration over the last five years [3]. The waiver is therefore likely unenforceable, but it shapes expectations and will be argued. The court has denied the indemnity where the supplier is obliged to block or delete the dealer's customer data at the end of the term, which Miele could adopt as a drafting route [4].

Redline: Delete § 18.3. If Miele insists on the data transfer, agree a fixed indemnity formula now (for example, a multiple of the trailing 12-month margin on the transferred accounts).

§ 6 and § 7 Minimum purchase and pricing

SEVERITY: MEDIUM

Clause: 500 units a year from year one; shortfall allows Miele to remove volume rebates or terminate. Miele may change list prices on 30 days' notice.

Issue: 500 units is ambitious for a new distributor without an installed base. Combined with short-notice price changes, the buyer carries both volume and price risk. Miele has just closed a cost program aimed at protecting margin and is renewing about 60% of its portfolio by 2028, so list-price changes and model run-outs during the term are likely [13].

Redline: Ramp the minimum (250 / 400 / 500), measured on a rolling 12 months, with shortfall consequences limited to rebate tiers in years one and two. Require 90 days' notice for price increases, honour confirmed orders at the old price, and cap annual increases at a named producer-price index plus two points. Add 6 months' notice of model discontinuation with a final-order window.

§ 10 Warranty and supplier recourse

SEVERITY: MEDIUM

Clause: 24-month warranty from delivery to the distributor; defects must be notified within five working days of delivery; recourse claims are limited to parts supply.

Issue: The warranty clock starts at delivery to the distributor, while the distributor's own liability to customers starts later. Where products reach consumers, BGB § 445a gives the seller recourse against its supplier for the costs of remedying defects [7], and BGB § 478 bars contractual deviations from that recourse to the seller's detriment in consumer-goods chains unless equivalent compensation is granted [8]. Hidden defects in complex machines rarely appear in five days, and the commercial duty to inspect under HGB § 377 only requires notice without undue delay

after discovery for defects not visible on inspection [9]. The EU right-to-repair rules, applied in Germany since July 2026, add repair obligations for washing machines beyond the legal warranty [11].

Redline: Warranty runs from installation at the end customer, max 30 months from delivery. Keep statutory recourse. Hidden defects: notify within 10 working days of discovery. Miele reimburses labour and travel at an agreed rate for warranty work.

§ 4 and § 5 Territory, online sales and non-compete

SEVERITY: MEDIUM

Clause: Non-exclusive territory; Miele reserves key accounts and direct online sales. The distributor may not sell competing brands during the term or for 24 months after it, and may sell online only through Miele-approved websites.

Issue: Under Regulation (EU) 2022/720 the block exemption applies only if both parties stay below 30% market share, and non-compete obligations longer than five years are not exempted [1]. A post-term non-compete is only exempted if it is limited to one year, to competing goods, and to the premises from which the buyer operated [1]. The 24-month clause exceeds that. Preventing the effective use of the internet is a hardcore restriction, although quality criteria for online sales and bans on online marketplaces can be acceptable [1]. Because Miele also sells direct, this is dual distribution, and information exchange between the parties is limited to what is needed to run the agreement [1].

Redline: Post-term non-compete of 12 months, premises only. Publish objective criteria for approved websites. Define the reserved key accounts by name.

§ 15 Force majeure and allocation

SEVERITY: LOW

Clause: Mutual force majeure covering natural events, strikes, government action, epidemics and supplier failures; either party may terminate after 120 days of continued force majeure.

Issue: The clause is balanced, but it lists "supplier failures" without limitation and contains no allocation rule. Miele is moving domestic washing-machine assembly from Gütersloh to Ksawerów in stages through 2027, so temporary capacity constraints during the contract term are a realistic scenario [14]. Without an allocation rule, a distributor could be served last.

Redline: Limit supplier failures to events that are themselves force majeure at the sub-supplier. Add pro-rata allocation across channels based on the trailing 12 months, and a right to source substitute products for affected customers without breaching the non-compete.

§ 20 Governing law and disputes

SEVERITY: INFO

Clause: German law; exclusive jurisdiction of the courts of Bielefeld, the regional court district covering Miele's seat in Gütersloh.

Issue: For an EU distributor this is workable: German law gives the protections cited above, including standard-terms control and the analogous dealer indemnity [3] [6], and judgments are enforceable across the EU. A non-EU distributor would face slower enforcement and should consider arbitration. The clause does not state whether the UN Sales Convention (CISG) applies to individual purchase orders; under German law it applies by default to cross-border sales between businesses in contracting states unless excluded.

Redline: State expressly whether CISG applies to individual orders. For a non-EU distributor, propose arbitration under DIS or ICC rules with seat in Frankfurt or Zurich, English as the language, and a single arbitrator below €2M in dispute.

SOURCES (14)

[1] EUR-Lex · Commission Regulation (EU) 2022/720 on vertical agreements

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[2] Gesetze im Internet · HGB § 89 (notice periods)

https://www.gesetze-im-internet.de/hgb/__89.html

[3] Gesetze im Internet · HGB § 89b (goodwill indemnity)

https://www.gesetze-im-internet.de/hgb/__89b.html

[4] BGH · Judgment of 5 February 2015, VII ZR 315/13 (dealer indemnity)

https://rewis.io/urteile/urteil/dsw-05-02-2015-vii-zr-31513/

[5] CMS · Limitations and exclusions of liability in B2B contracts: Germany

https://cms.law/en/int/expert-guides/limitations-and-exclusions-of-liability-in-b2b-contracts/germany

[6] Gesetze im Internet · BGB § 307 (standard terms control)

https://www.gesetze-im-internet.de/bgb/__307.html

[7] Gesetze im Internet · BGB § 445a (supplier recourse)

https://www.gesetze-im-internet.de/bgb/__445a.html

[8] Gesetze im Internet · BGB § 478 (recourse in consumer goods chains)

https://www.gesetze-im-internet.de/bgb/__478.html

[9] Gesetze im Internet · HGB § 377 (inspection and notice of defects)

https://www.gesetze-im-internet.de/hgb/__377.html

[10] Gesetze im Internet · ProdHaftG § 14 (no exclusion of liability)

https://www.gesetze-im-internet.de/prodhaftg/__14.html

[11] BUSE · Right to repair now enshrined in German law

https://buse.de/en/blog-en/commercial-en/right-to-repair-now-enshrined-in-german-law/

[12] EUR-Lex · Commission Regulation (EU) 2019/2023 on ecodesign for washing machines

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[13] Miele · Business year 2025 press release, March 2026 (Swiss edition, PDF)

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[14] Elektrowirtschaft · Miele startet weltweites Effizienzprogramm, February 2024

https://www.elektrowirtschaft.de/umsatzrueckgang-und-stellenabbau-miele-startet-weltweites-effizienzprogramm/