

## CONTRACT AND DOCUMENT TEMPLATES



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**BENCHMARKING GRID  
INSTRUCTIONS**

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This document is divided into three parts. The first part provides a brief overview of functional analysis, the second part outlines the methodology regarding the benchmarking grid using Part **2.00** of document **K02200a (Distribution Agreement)** from our Business Precedents collection, and the third part contains a benchmarking grid based on the transactional template (document **Z03200a—Transactional Agreement Template**), also part of our Business Precedents collection.

**1.00 A BRIEF OVERVIEW OF FUNCTIONAL ANALYSIS**

When called upon to review a business agreement, one must go through the arduous process of reading each provision and commenting on whether or not it appropriately reflects the reviewer’s objectives and understanding of the proposed business deal. This practice, although very widespread, is not ideal because the quality of the review is wholly dependant on the skills and experience of the reviewer, which tend to vary considerably from one person to another. When available, checklists are used to make sure that all the important provisions are there.

Although such a tool can prove very useful, there is nevertheless a real need to provide reviewers with a better tool to support such a task. The ideal tool should allow the reviewer to go beyond simply verifying the presence of a provision (as is the case with a checklist), it should also highlight the similarities and differences between the provision in question and the benchmark provision to determine whether they match or whether one is better than the other. Such a tool must also provide the reviewer with the ability to do so in a simple and orderly manner, hence the rationale behind the document that follows.

**2.00 METHODOLOGY**

**2.01 Design of Benchmarking Grid**

The benchmarking grid is divided in three separate columns (see illustration below):

BENCHMARK: K02.200	MATCHING PROVISIONS	VARIATIONS/OBSERVATIONS
<b>2.00 CONSIDERATION</b>		
<p><b>2.01 Price List</b></p> <p>The MANUFACTURER shall deduct... PERCENT (... %) from its sales invoices to the DISTRIBUTOR for all Products purchased.</p>		

BENCHMARK: K02.200	MATCHING PROVISIONS	VARIATIONS/OBSERVATIONS
<p style="text-align: center;"><b>2.02 Adjustment</b></p> <p>It is agreed between the PARTIES that the rate stipulated in Section 2.01 herein may be adjusted ..... (...) months after the effective date of the Agreement to allow the PARTIES to adjust the rate so that it takes into account changes affecting the business experience acquired, the profitability of their respective operations, and changes to the exchange rate, as the case may be. In such case, the PARTIES shall comply with Section 12.05 herein.</p>		
<p style="text-align: center;"><b>2.02.01 Price Revision</b></p> <p>The DISTRIBUTOR agrees to pay for the Products it shall purchase for resale purposes during the term of the agreement, the amounts stated in the MANUFACTURER's price list, a copy of which is attached hereto as Schedule 2.01.</p>		

The column on the left, bearing the title “BENCHMARK” and followed by a document number, reproduces the table of contents of the corresponding agreement from the Edilex catalogue. This “benchmark agreement” contains all standard and non-standard provisions that may be used in this type of business agreement and must be constantly kept up-to-date to ensure that it is as comprehensive as possible.

The middle column, bearing the title “MATCHING PROVISIONS”, must contain the exact reference number of the provision(s) of the reviewed agreement that match(es) the content of the benchmark provision listed in the left-hand column; this column, once completed, tells us at a glance what the reviewed agreement contains and what is missing from it.

The column on the right, bearing the title “VARIATIONS/OBSERVATIONS”, is used to record all reviewer comments regarding any differences between a specific provision in the reviewed agreement and the corresponding provision in the benchmark agreement. In a Word version of the benchmarking grid, in addition to noting the reviewer’s comments, it is also possible to insert a copy of the matching provision from the reviewed agreement, thereby making the benchmarking grid an even more efficient analytical tool because of its more detailed content.

**2.02 Step-by-Step Guide to Using the Benchmarking Grid**

In sum, the reviewer’s work will consist of recompiling the reviewed agreement into a benchmarking grid based on a business agreement whose structure adheres to the drafting standards developed by Edilex for such documents.

**2.02.01 Step #1**

Read each provision of the reviewed document in sequence, and seek its matching provision in the benchmarking grid.

To illustrate, suppose that the reviewed document contains the following provision:

<p><b>SECTION III—CONSIDERATION</b></p> <p>The DISTRIBUTOR is entitled to a rebate on the purchase price of Products, as set out in the current price list attached as Schedule “...” hereto. The prices may, from time to time, be adjusted by the MANUFACTURER. In such case, the new price list shall be forwarded to the DISTRIBUTOR at least ..... (....) days before it comes into effect.</p> <p>The DISTRIBUTOR shall pay the MANUFACTURER the price of the purchased Products according to the terms and conditions set out in the price list attached as Schedule “...” hereto. However, the MANUFACTURER reserves the right to change said terms and conditions, from time to time, by sending prior notice to the DISTRIBUTOR, which will affect Products ordered by the latter following receipt of said prior notice.</p>
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The matching provisions of the benchmark agreement would be as follows:

**2.00 CONSIDERATION**

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**2.01 Price List**

The MANUFACTURER shall deduct... PERCENT (... %) from its sales invoices to the DISTRIBUTOR for all Products purchased.

**2.02 Adjustment**

It is agreed between the PARTIES that the rate stipulated in Section 2.01 herein may be adjusted ..... (....) months after the effective date of the Agreement to allow the PARTIES to adjust the rate so that it takes into account changes affecting the business experience acquired, the profitability of their respective operations, and changes to the exchange rate, as the case may be. In such case, the PARTIES shall comply with Section 12.05 herein.

**2.02.01 Price Revision**

The DISTRIBUTOR agrees to pay for the Products it shall purchase for resale purposes during the term of the agreement, the amounts stated in the MANUFACTURER’s price list, a copy of which is produced in Schedule 2.01 attached hereto.

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**2.02.02 Step #2**

Upon identifying/locating the provision(s) from the reviewed agreement that match(es) the benchmark provision in the left column, insert the exact reference of this provision in the benchmarking grid, under the column MATCHING PROVISION(S) (e.g. 2.01 and 2.02), as illustrated below:

<b>BENCHMARK: K02.200</b>	<b>MATCHING PROVISIONS</b>	<b>VARIATIONS/OBSERVATIONS</b>
<p><b>2.00 CONSIDERATION</b></p>		
<p><b>2.01 Price List</b></p> <p>The MANUFACTURER shall deduct... PERCENT (... %) from its sales invoices to the DISTRIBUTOR for all Products purchased.</p>	<p>SEC. III (1) (first part)</p>	
<p><b>2.02 Adjustment</b></p> <p>It is agreed between the PARTIES that the rate stipulated in Section 2.01 herein may be adjusted ..... (...) months after the effective date of the Agreement to allow the PARTIES to adjust the rate so that it takes into account changes affecting the business experience acquired, the profitability of their respective operations, and changes to the exchange rate, as the case may be. In such case, the PARTIES shall comply with Section 12.05 herein.</p>	<p>SEC. III (1) (second part)</p>	
<p><b>2.02.01 Price Revision</b></p> <p>The DISTRIBUTOR agrees to pay for the Products it shall purchase for resale purposes during the term of the agreement, the amounts stated in the MANUFACTURER's price list, a copy of which is produced in Schedule 2.01 attached hereto.</p>	<p>SEC. III (2)</p>	