

# Agency Agreements: TURKEY



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# 1 Introduction



The legal status of the Agent, its duties, rights and obligations are regulated by the Articles 118-134 of the Turkish Commercial Code (TCC) dated 1956 No. 6762.

According Article 116 of the TCC, the Agent is some one who is acting as intermediary in affairs concerning a commercial undertaking in a permanent manner, in a determined place or district on the basis of a contract, without having a dependent position such as a commercial representative, commercial proxy, salesman or employee, or of carrying on these operations on behalf of the said undertaking.

According Art 117 the provisions of this Chapter shall also apply to the following:

1. Persons authorized permanently to conclude contract in their name on behalf of a local or foreign undertaking;
2. Persons acting as intermediary for the conclusion of insurance contracts;
3. Persons carrying on transactions in the country on behalf and for account of foreign commercial undertaking having no office or branch within the Republic of Turkey.



# 1. Introduction

## ***Exclusivity:***

Unless agreed to the contrary in writing, the principal may not appoint at the same time more than one Agent in the same territory for the same branch of commerce and in the same way of thinking, the Agent should not act as intermediary in the same locality or the same district for several commercial undertakings in competition with each other.

## 2 Powers of the Agent

TURKEY



As per Art 119 and following articles, the Agent is authorized to make or receive all declaration protecting rights such as warning, notice, protest, in connection with the contract he has concluded or for which he has acted as intermediary.

The Agent may sue or be sued on behalf of his principal in connection with disputes arising from such contracts. All clauses, which are contrary to these provisions, are not valid.

The Agent is not authorized, without written and special proxy or approval of his principal, to collect the price of goods which have not been delivered by him or to take delivery of goods for which he has not paid himself, and may not postpone the payment or reduce the account of debts resulting from the transactions.

The Agent is not authorized to conclude a contract on behalf of his principal without special and written approval.

The Agent is obliged to have registered and advertised the documents which confer upon him the power of concluding contracts on behalf of his principal.

If the Agent concludes a contract on behalf of his principal without being authorized or by exceeding his powers, his principal shall be deemed to have given his approval if he does not inform the third party that he has given no such approval as soon as he learns of the conclusion of the contract. Failing any approval the agent shall be personally responsible for the contract.

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## 3 Obligations of the Agent

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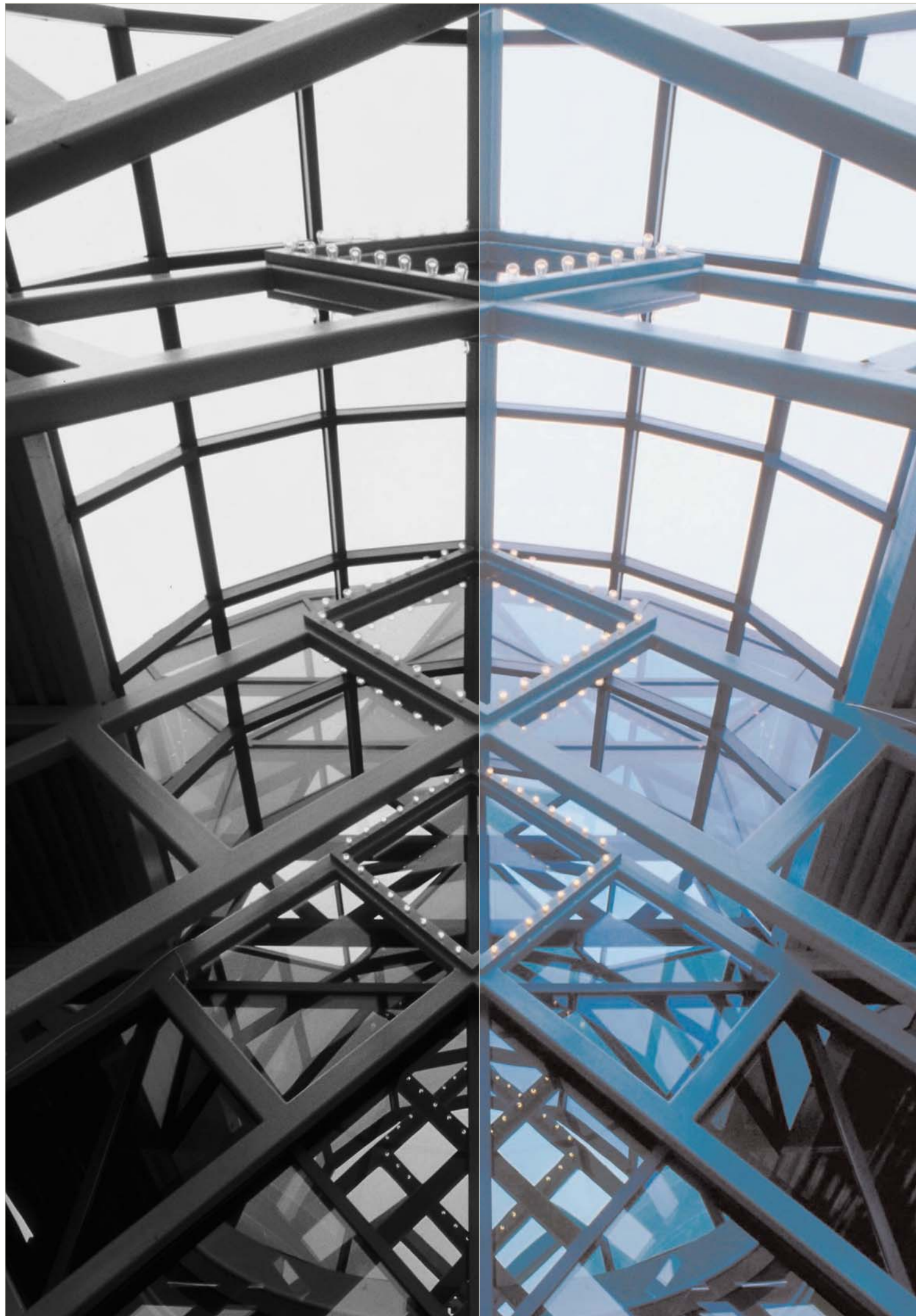


The Agent shall attend to the affairs of his principal and safeguard his interest in accordance with the contract, in the district and for the branch of commerce, which have entrusted to him.

The Agents shall be particularly responsible for any damage to the goods or articles which he is holding for account of his principal unless he proves that he was not at fault.

The Agent shall advise in due time his principal of the declarations of third parties which he is qualified to receive, of the situation and conditions of the market in his district, of the financial situation of customers and of changes having occurred in this situation and of all questions which interest his principal regarding transactions made.

The Agent may delay the transactions until he has received order in matters for which the principal has not given clear instructions. He shall, however, conclude the transaction according to his view as a cautious merchant if the urgency of the affair does not allow him to consult his principal or if the agent is authorized to act in the best conditions.



## 4 Preventive Measures

TURKEY



If the Agent sees any sign indicating that the goods of which he has taken delivery for account of his principal have suffered damage during transport he shall, in order to secure the right of his principal to sue the carrier, have the damage surveyed, take other necessary measures, preserve the goods as possible or, if there is a danger of complete loss, have them sold with the permission of the responsible court in accordance with Section 92 of the Code of Obligations and inform without delay his principal. Otherwise he is obliged to compensate the damage resulting from his negligence.

If the goods sent for sale to the agent of a kind that deteriorates rapidly or are subject to alterations likely to reduce their value, and he has no time to consult the principal or if the principal is late in giving him permission, the agent is empowered to have the goods sold in accordance with Section 92 of the Code of Obligations with the permission of the responsible court and is obliged to have them sold if the interest of his principal require it.



## 5 Obligation to pay

TURKEY



If the Agent does not send or hand the money belonging to his principal when he ought to do so, he shall pay interest from that moment and, if necessary, also compensation.

### *Rights of the Agent:*

#### **I. Indemnification of exceptional expenses**

The Agent may demand only the indemnification of exceptional expenses out of the expenses he has incurred for his affairs.

#### **II. Remuneration**

##### **1. Transactions subject to remuneration**

The Agent has the right to demand a remuneration for the transactions he has concluded or for which he has acted as intermediary and for the transactions included in his branch of exclusively which have been concluded without his intervention directly between his principal and persons in his territory.

The principal shall communicate immediately to the agents the transactions that he has concluded directly.

## **2. Date at which the agent is entitled to the remuneration**

The Agent acquires the right to remuneration on the date at which the contract has been concluded and if the contract consists in purchasing, manufacturing or selling a commodity, on the date at which his principal receives the commodity or its price or another consideration in its stead. In such cases the agent may claim payment of the remuneration even if the contract has not been performed for a cause attributable to the principal.

If the contract must be performed in parts, the agent acquires the right to the remuneration to the extent in which the contract has been or should have been performed.

## **3. Amount of remuneration**

As long as there is no clause in the contract, the amount of the remuneration shall be determined according to commercial practice ruling in the locality of the agent and, failing any practice according to circumstances,

## **4. Time of payment of the remuneration**

The principal shall give to the agent, together with a statement of account, a copy of the entries referring to the transactions on which he is entitled to receive a remuneration.

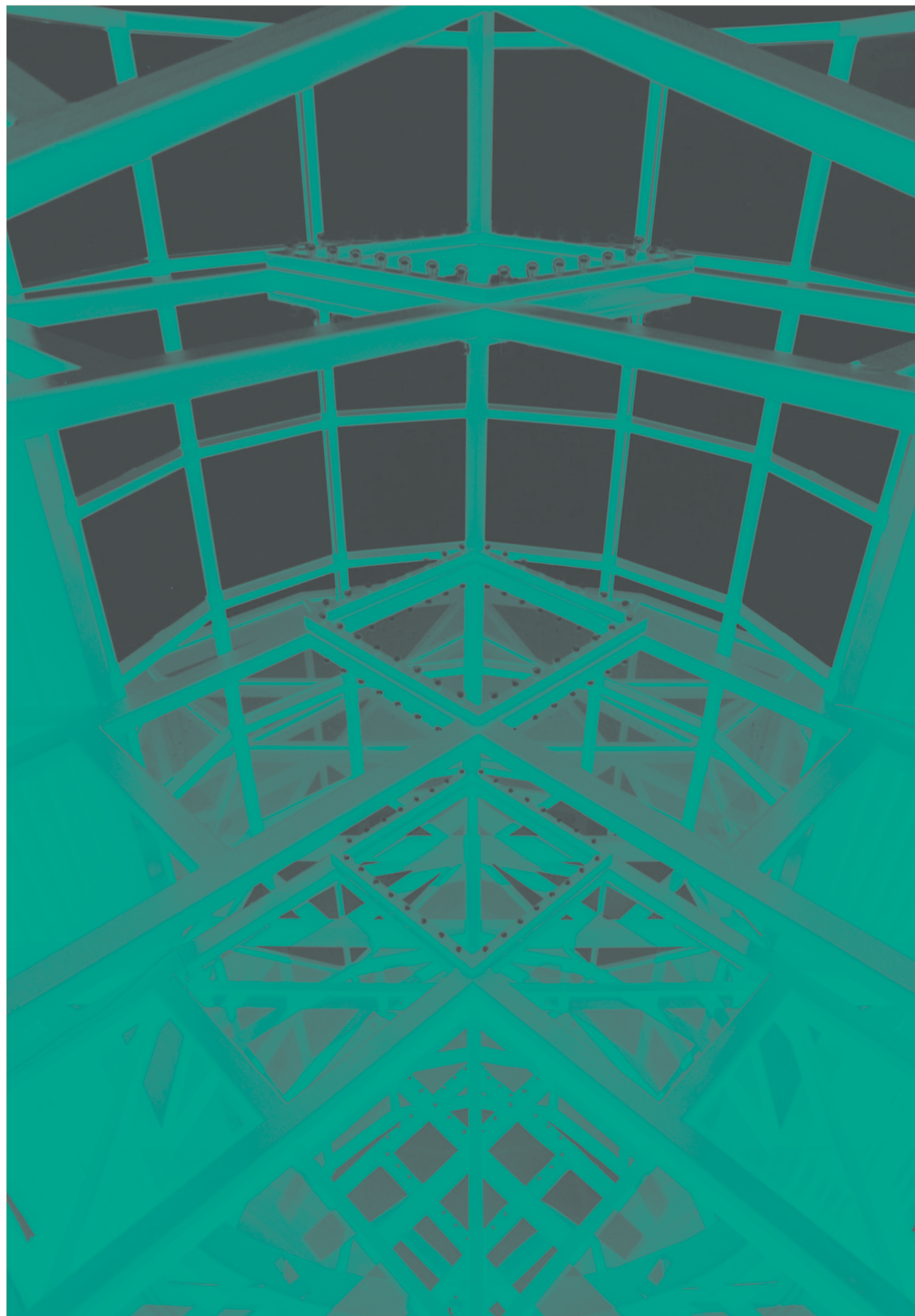
Debts due to the Agent shall be established and paid to the agent once every quarter, unless agreed to the contrary and in any case as the end of the calendar year or when the agency contract expires.

## **III – Lien**

The Agent has a lien on the movables that he has taken and that are either in his possession or in the possession of a third party who continues to hold them for a special cause and on goods which he can dispose by means of securities or warrants, in accordance with his agency contract, until all the debts due to him by his principal have been settled.

In case goods belonging to the principal are sold owing to the contract or to the law, the agent has the right to refuse to pay the price of goods which have been sold.

If the principal is in state of insolvency, the foregoing paragraph shall also apply to debts owing to the agent, which are not yet due.



## 6 Expiry of the agency contract

TURKEY

### I – Causes

Each of the parties may, with three months notice, terminate the agency contract concluded for an undefined time, Even if a term has been specified by the contract it may also be terminated on rightful ground.

### II – Obligation of compensation

The party terminating the contract without rightful grounds and without giving three months notice shall compensate the losses of the other party resulting from not completion of business commenced.

If the contract expires due to bankruptcy, the death of the principal or of the agent, the agent or the persons replacing him according to the circumstances indicated above shall be paid a suitable compensation which will be determined according to the remuneration which should have been paid to him if the business has been completed.

As it is seen from this explanation if the Agency Contract is terminated with rightful motives, or if the Principal has respected the three months notification period, or if the Contract is terminated at the end of its term normally no any indemnification needs to be paid.

However generally Agency transactions are not so simple and in some cases specially where the Agent has spent a lot of efforts or money in order to introduce to the market the product or the Trade Mark and has made it famous or well known and the Principal or the new Agent will benefit from this situation after and consequently each case must be studied separately.



## 6 Expiry of the agency contract

In contrary to some legislations like the Swiss Code of Obligations (Art 418), the Turkish Commercial Code has not accepted the principle to pay any amount of indemnity to the Agent in case the termination is done properly according the provisions mentioned above. But Art 108 of the Code of Obligations recognise to the non-defaulting party the possibility to receive a reasonable indemnity in case of termination of contract. In this line of thinking although the Principal respects the provisions mentioned above for example makes the notification three month before, the non-defaulting Agent may have right to some indemnity according the conditions of the case.

On the other hand, conditions which foresees not to pay any indemnity even in case of wrongful act of the other party being illegal are not valid.



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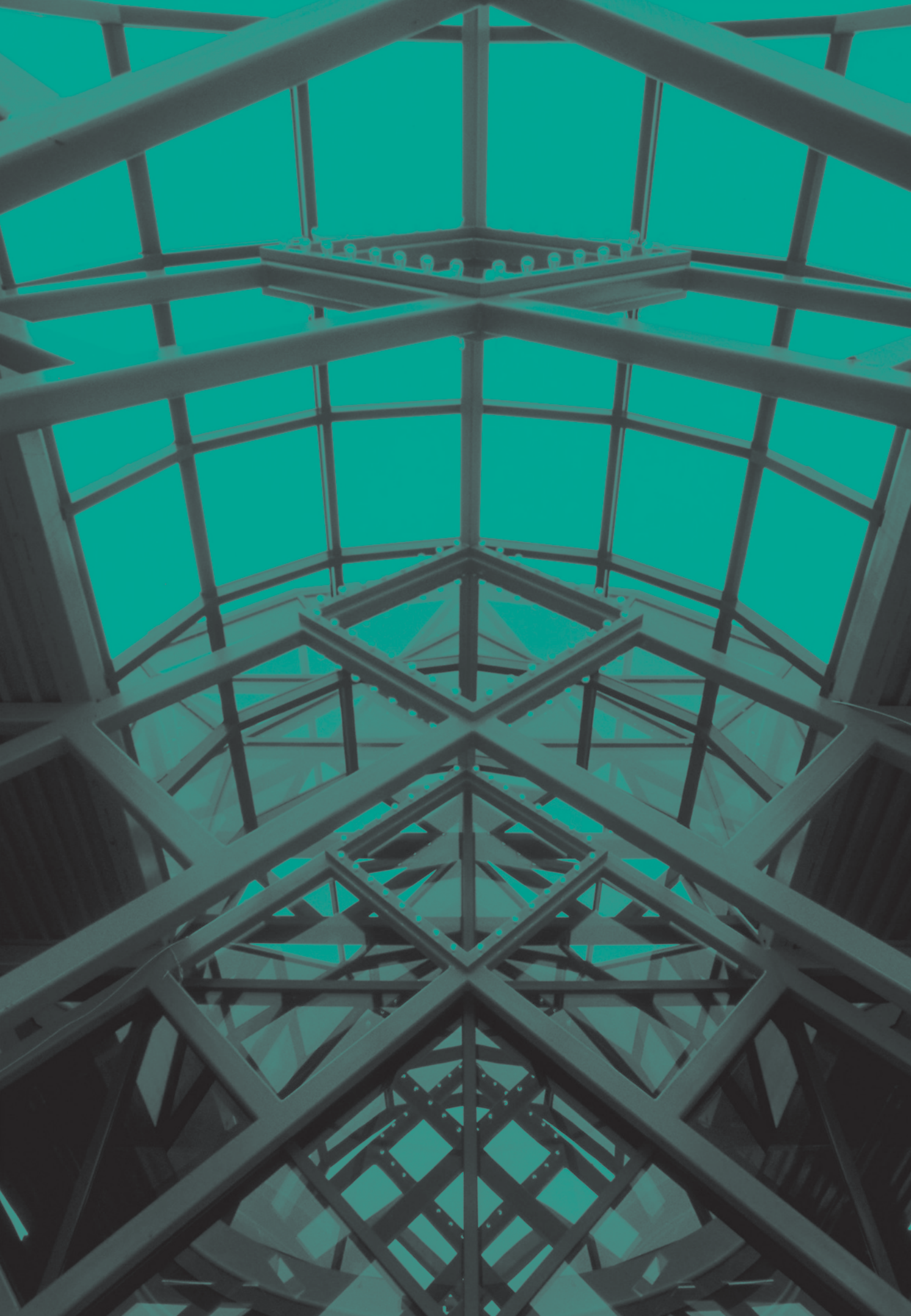
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