


# Manufacturer's Representative Agreement

- 🔊 Use this sample agreement when hiring a sales rep firm or an independent sales rep.
- 🔊 See also the "Sales Representative" agreement
- 🔊 The first part of the Memorandum should be completed, and distributed to the potential Manufacturer's Representatives along with a copy of the Manufacturer's Representative Agreement.

Date: **[Date]**

To: **[Name of Manufacturer's Representative]**

From:  **[Owner/Founder]**  
**[Company]**

Subject: **Manufacturer's Representative Agreement**

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Attached to is our "Manufacturer's Representative" Agreement.

I believe that it embodies everything we discussed.

Please read the agreement carefully.

We recommend that you also have it reviewed by your own qualified legal counsel.

Time is of the essence.

Please sign and return it to me asap.

Thank you very much!

# From JIAN

## NOTICE:

We wish we could provide an agreement that was tailored *exactly* to your business. While this is not always possible, we feel that we've come very close and that this document provides you with the head-start that you need to get your deal moving. Nevertheless, we must make this disclaimer:

- 🚫 **Do Not Use This Agreement 'As-Is.'**
- 🚫 **This Agreement Is Not Legal Advice.**
- 🚫 **Read it Thoroughly and Make All Appropriate Changes to Fit Your Requirements.**
- 🚫 **You Should Have this Agreement Reviewed and Approved by a Qualified Attorney at Law Before Using It.**
- 🚫 **JIAN Accepts No Liability for the Effectiveness of This Document For Your Purposes.**

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We're building a network of business experts who are eager to help you when you need it. They can review your work, make suggestions, handle unique situations and introduce you to influential people. On our website you can search by expertise and location, then e-mail or jump straight to their website. Although they are professionals and charge for their services, most offer an initial consultation free of charge. They're in your area and you can contact them directly.


- Please visit our website under [Expert Referral Network](#).

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Things change, laws change, the world changes... new ideas come along all the time. When you register, you can access our website to get updates and changes... like new and improved spreadsheets and documents. They can be downloaded directly to your computer.

- Please visit our website under [Updates](#).
- Remember to bookmark our website: [www.JIAN.com](http://www.JIAN.com)

## Editing Your Sample Contract

Since this entire agreement is formatted in Word, you can edit it like any other Word document. You can jump from variable to variable by clicking the above  green arrows (JIAN Menu) which will take you forward / backward and highlight the entire sample text identified within the “[ ]” brackets – simply edit / type-over with your information.

To make sure you have filled in all the variables, use Word's 'FIND' function to locate any “[ ]” which may contain an unedited variable.

- Click the  icon in the JIAN menu above to turn the expert comments on/off.
- Upon completion, delete any unnecessary blank lines that remain.
- You may format this document any way you like.
- Delete this page.

# Manufacturer's Representative Agreement

☞ This is a standard introductory paragraph that lists the parties to the Agreement.

Effective Date                      **[Date]**

By and between                      **[Company Legal Name]** (“[Company]”)  
A    [State] [Corporation]  
Located at                              [Address]  
    [City], [State] [Zip Code]

and    **[Manufacturer's Representative]** (“Representative”).  
A    [State] [Corporation]  
Located at                              [Address]

☞ Section 1 gives exclusive rights to the Manufacturer's Representative to “represent” the Company's products to resellers or other customers in defined geographic areas. Often, companies will not want different Representatives to operate in the same geographic areas for fear of confusing potential customers. Basically, this section means that the Representative, and no other individual or entity, can represent the product in the specific geographic areas.

☞ If possible use States, Counties, ZIP codes.

## 1. Exclusive Representative

1.1 [Company] grants to Representative the exclusive right to act as [Company]'s Sales Representative, to solicit orders for [Company]'s goods, equipment and / or services, namely, within the following geographical region(s):

1.2 [Specific Products/services];

1.3 [Geographic Area(s)];

## 2. Sales Policies

☞ The Company should set its national and international sales policies and provide such information to its Manufacturer's Representatives. The Representative needs to understand and follow these sales policies so that the Company can present a united front to all of its potential customers.

2.1 The prices, charges and terms of sale of the Products shall be established by [Company]. The Sales Policies shall be those currently in effect and established from time-to-time by [Company] in its price books, bulletins and other authorized releases. Written notice of any Sales Policy changes shall be given by [Company] to the Representative at least thirty (30) days in advance of such change.

### 3. Orders & Collections

☞ Section 3 states that the Representative can solicit the order and then the Company can approve and fulfill those orders.

3.1 Orders for Products solicited by the Representative shall be forwarded to and subject to acceptance by [Company]. [Company] agrees to refer to the Representative for attention all inquiries, and to promptly furnish the Representative with copies of all correspondence in documentation between the Company and the Customer. All invoices in connection with orders solicited by the Representative shall be rendered by [Company], direct to the Customer, and full responsibility for all collections and bad debts rests with [Company].

### 4. Representative's Commissions

☞ The following section sets the Representatives' commission payment terms. Basically, the Representative gets a percentage on all products sold in the prescribed geographic territory.

4.1 The commissions payable by [Company] to the Representative on orders solicited within or delivered to the Representative's Territory shall be as follows:

4.2 [x]% on all products sold in the Representative's territory. Commissions shall be deemed earned by the Representative upon acceptance or delivery of the order by [Company], whichever occurs first. Commissions earned by the Representative shall be computed on the net amount of the invoice rendered for each order or part of an order, exclusive of freight and transportation cost (including insurance), normal and recurring bona fide trade discounts, and any applicable sales or similar taxes. All commissions earned by the Representative shall be due and payable to the Representative on or before the twentieth (20th) day of the month immediately following the month that the invoice is written.

### 5. Relationship Created

☞ Section 5 is included to express the parties' intentions that the Representative is not an employee of the Company and that the Representative has limited authority under this Agreement. Should the Representative and the Company ever dispute the scope of their relationship, they can turn to this section for guidance.

5.1 The Representative is not an employee of [Company] for any purpose whatsoever, but is an independent contractor. [Company] is interested only in the results obtained by the Representative, who shall have sole control of the manner and means of performing under this Agreement. [Company] shall not have the right to require the Representative to do anything that would jeopardize the relationship of the independent contractor between [Company] and the Representative. All expenses and disbursements incurred by the Representative in connection with this Agreement shall be borne wholly and completely by the Representative. The Representative does not have, nor shall he hold himself out as having any right, power or authority to create any contract or obligation, either express or implied, on behalf of, or binding upon [Company], unless [Company] shall consent to that in writing. The Representative shall have the right to appoint and shall be solely responsible for his own salesmen, employees, agents and Representatives, who shall be at the Representative's own risk, expense and supervision and shall not have any claim against [Company] for compensation or reimbursement. The Representative shall not represent lines, products and goods that compete in any manner with the lines, products and goods of [Company] during the existence of the contract relationship.

### 6. Term

☞ Section 6 sets forth the duration of the Agreement. It also acknowledges that the Representative will be paid the requisite commission for orders solicited before termination of the Agreement.

6.1 This Agreement shall continue in full force and effect until the date defined in a notice given by one

party to the other indicating such party's election to terminate this Agreement (the "Termination Date"). That Termination Date shall be at least sixty (60 ) days after the notice date of such election is given. Alternately, this Agreement may be terminated at any time by mutual written Agreement between both parties to it. If this Agreement shall terminate for any reason whatsoever, the Representative shall be entitled to receive his full fees determined in accordance with provisions of Section 4 with respect to orders solicited prior to the effective date of such termination, regardless of when such orders are accepted by [Company] (provided the Representative can demonstrate such orders were solicited prior to the effective date of such termination) and regardless of when such shipments are made or invoices rendered.

## 7. Hold Harmless

🔊 In Section 7, the Company agrees to protect the Representative from being dragged into a lawsuit against the Company.

7.1 [Company] shall hold the Representative harmless from and against and indemnify the Representative for all liability, loss, costs, expenses or damages caused by any reason of any Products (whether or not defective) or any act or omission of [Company], including but not limited to any injury (whether to body, property or personal or business character or reputation) sustained by any person or to any person or to property, and [Company] infringement of any patent rights or other rights of third parties, and for any violation of municipal, state or federal laws or regulations governing the products or their sale, that may result from the sale or distribution of the Products by the Representative under the terms stated in this Agreement. This Agreement shall be subject to and shall be enforced and construed according to the laws of the State of [ Representative's State] where the Representative's office is located, as defined below. [Company] appoints as its Representative for service for process in connection with any action brought by the Representative against [Company] under the terms of this Agreement the Secretary of State of the Representative's state of residence at the time such action is brought in the event of litigation, the prevailing party may recover court cost and reasonable attorney's fees.

## 8. General Provisions

🔊 The General Provisions that follow are fairly standard. These provisions enhance the balance of the Agreement by explaining issues such as notice, assignment, legal remedies, waiver, and attorney fees.

8.1 **Independent Contractors.** The relationship between both parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either party the power to direct and control the day-to-day activities of the other. Neither party is an agent, representative or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such relationship upon either party.

🔊 You must decide which state governs this Agreement and where any legal action would be taken. Generally, it is your (company's) state of residence.

8.2 **Governing Law & Jurisdiction.** This agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of [State], without reference to conflict of law principles. The parties hereby expressly consent to the jurisdiction and venue of the federal and state courts within the state of [State]. Each party hereby irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party at its address set forth in the preamble of this Agreement, such service to become effective thirty (30) days after such mailing.

☞ This Agreement is intended to be the only Agreement, and that no other documents or communications are binding. Therefore, it is very important to make sure that everything [Company] and [Client] have agreed to is included in this Agreement. Otherwise, it is as if it was not agreed to.

8.3 **Entire Agreement.** This Agreement, including the attached exhibits, constitutes the entire Agreement between both parties concerning this transaction, and replaces all previous communications, representations, understandings, and Agreements, whether verbal or written between the parties to this Agreement or their representatives. No representations or statements of any kind made by either party, which are not expressly stated in this Agreement, shall be binding on such parties.

☞ Any changes to this Agreement must be in writing and signed by the party against whom that writing is to be used.

8.4 **All Amendments in Writing.** No waiver, amendment or modification of any provisions of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom such waiver, amendment or modification is sought to be enforced. Furthermore, no provisions in either party's purchase orders, or in any other business forms employed by either party will supersede the terms and conditions of this Agreement.

☞ All notices between the parties must be in writing and either delivered in person or by certified or registered mail, return receipt requested.

8.5 **Notices.** Any notice required or permitted by this Agreement shall be deemed given if sent by registered mail, postage prepaid with return receipt requested, addressed to the other party at the address set forth in the preamble of this Agreement or at such other address for which such party gives notice hereunder. Delivery shall be deemed effective three (3) days after deposit with postal authorities.

☞ In the event of a lawsuit or any legal proceeding involving this Agreement, the losing party will have to pay the winning party his or her costs and expenses, including reasonable attorney fees.

8.6 **Costs of Legal Action.** In the event any action is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs of enforcement including, without limitation, attorneys' fees and court costs.

☞ Legal remedies, i.e., money damages, may not be sufficient; therefore, both parties agree to equitable remedies such as an injunction where the breaching party would be required to do or not to do something.

8.7 **Inadequate Legal Remedy.** Both parties understand and acknowledge that violation of their respective covenants and Agreements may cause the other irreparable harm and damage, that may not be recovered at law, and each agrees that the other's remedies for breach may be in equity by way of injunctive relief, as well as for damages and any other relief available to the non-breaching party, whether in law or in equity.

☞ Assuming the parties wish to use Arbitration in the event of a dispute, the following section should be included. You take your chances with an arbitrator, but it keeps legal costs down and keeps you out of a drawn out legal process.

8.8. **Arbitration.** Any dispute relating to the interpretation or performance of this Agreement shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in [County], [State] in accordance with the then-existing rules of the American Arbitration Association. Judgment upon any award by the arbitrators may be entered by any state or federal court having jurisdiction. Both parties intend that this Agreement to arbitrate be irrevocable.

☞ Merely delaying to bring an action that one party has a right to bring does not cause that party to lose or waive his right to pursue that action.

8.9 **Delay is Not a Waiver.** No failure or delay by either party in exercising any right, power or remedy

under this Agreement, except as specifically provided in this Agreement, shall operate as a waiver of any such right, power or remedy.

- ☞ Neither party will be blamed if there is a problem resulting from something beyond its control, such as an earthquake, flood, war.

**8.10 Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any Act of God, strike, fire, flood, governmental acts, orders or restrictions, Internet system unavailability, system malfunctions or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party (a “Force Majeure Event”), the party who has been so affected shall give notice immediately to the other party and shall use its reasonable best efforts to resume performance. Failure to meet due dates resulting from a Force Majeure Event shall extend such due dates for a reasonable period. However, if the period of nonperformance exceeds sixty (60) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice, terminate this Agreement effective immediately upon such notice or at such later date as is therein specified.

- ☞ This section limits the ability of either party to transfer any of its rights or delegate any of its duties to third parties.

- ☞ You want to make sure that you can sell your business along with all of the relationships you have developed along the way. (Often these relationships can add tremendous value to your business and you want to make sure that all of your agreements can be transferred to the new owners.) I wouldn't want to seek (let alone pay for) permission to sell my company.

- ☞ Generally, neither party may assign their respective rights to a third party; however, with the possible exception of assignment to a successor corporation or partnership, either party may transfer its rights or obligations under this Agreement without the approval of the other party. This Agreement would be binding on the 3<sup>rd</sup> party.

- ☞ However, you may want to limit each other's ability to pass along this deal to another possibly unknown and possibly unfriendly entity. The second paragraph prevents unauthorized transfer of responsibilities...

- ☞ CHOOSE one or the other of these two following paragraphs.

**8.11 Assignability & Binding Effect.** Except as expressly set forth within this Agreement, neither party may transfer or assign, directly or indirectly, this Agreement or its rights and obligations hereunder without the express written permission of the other party, not to be unreasonably withheld; provided, however, that both parties shall have the right to assign or otherwise transfer this Agreement to any parent, subsidiary, affiliated entity or pursuant to any merger, consolidation or reorganization, provided that all such assignees and transferees agree in writing to be bound by the terms of this Agreement prior to such assignment or transfer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

- ☞ This paragraph DOES NOT ALLOW either party to transfer its rights to a successor company without prior approval.

**8.11 Non-Assignability & Binding Effect.** Except as otherwise provided for within this Agreement, neither party may assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written permission of the other. Any such assignment is deemed null and void.

- ☞ If any part of this Agreement is unenforceable or invalid, the balance of the Agreement should still be enforced. Basically, ignore any sections that are invalid.

**8.12 Certain Sections Invalid.** If any provisions of this Agreement are held by a court of competent

jurisdiction to be invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted and the remaining provisions of this Agreement shall remain in full force and effect.

🔊 The headings of the various sections are meant to explain or otherwise give meaning to those sections; they are for convenience only.

8.13 **Headings.** The titles and headings of the various sections and sections in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this Agreement.

🔊 Even after the termination of the Agreement, the parties may still have certain responsibilities such as keeping information confidential.

8.14 **Survival of Certain Provisions.** The warranties and the indemnification and confidentiality obligations set forth in this Agreement shall survive the termination of the Agreement by either party for any reason.

### Understood, Agreed & Approved

We have carefully reviewed this contract and agree to and accept all of its terms and conditions. We are executing this Agreement as of the Effective Date above.



**Representative**

**[Company]**

\_\_\_\_\_  
[Representative]

\_\_\_\_\_  
[Owner/Founder]

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date