

Salesperson Agreement

Commission Only

- ⏪ Before you hire any sales representative, you will be glad you have *this* agreement in place.
- ⏪ A Sales Representative Agreement is an agreement used by a business to appoint its sales representatives. The agreement sets forth the status of the sales representative as either exclusive or non-exclusive, designates the representative's sales territory, and indicates the products s/he is authorized to sell.
- ⏪ Being sued by a former employee who felt he should be paid for sales 10 years out into the future inspired this contract. It's probably our best one... we built it with a vengeance. It's probably worth over \$100,000, but it's only a few pages, and you will be very happy you have this in place with every salesperson you hire, either as a contractor on straight commission or as an employee with a base salary.
- ⏪ The first part of the Memorandum should be completed and distributed to the other party along with a copy of the Salesperson Commission Only Agreement.

Date: **[Month, Day, Year]**

To: **[Name of Salesperson]**

From: **[Owner/Founder]**

[Company]

Subject: **Salesperson Commission Only Agreement**

Attached is a "Salesperson Commission Only" Agreement in order to set forth all of the terms and conditions, including commission rates, for your employment as a commission-based sales representative for us.

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.**

Free Access to Attorneys, Accountants & Consultants in Your Area

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.


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- Please visit our website under [Updates](#).
- Remember to bookmark our website: 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.

occurrence of one or more of the following:

- The Employer's business shuts down.
- The Employee dies.
- The Employee loses his legal capacity.
- The death of any partner in the business.
- The Employer's loss of its legal capacity to contract.
- The Employee's breach of duty.
- The Employee's habitual neglect of his / her employment duties.
- The Employee's continued incapacity to perform his / her duties.
- The willful or permanent breach of the Employee's obligations.

1.2.2 Effect on Compensation. The Employee will be entitled to the compensation earned prior to the date of termination. The Employee will be entitled to no compensation beyond the date of termination.

☞ If the Employee's employment terminates, he / she must submit any claims he / she has for commissions within the period of time (in brackets) following the termination date.

1.2.3 Effect on Commission. All claims for commissions are waived by the Employee if not made within [xx] days of the date of the termination.

2. Employee's Obligations

☞ For the first insert in Section 2.1, state the goods or type of goods the Employee will be selling. For the second insert, state the type of buyers (for example, the general public or specific dealers).

2.1 Employment as Salesperson. The Employee will provide sales services for the Employer; the Employee will sell [Insert type of goods] (the "Merchandise") in the territory described below to [x] (Type of buyers).

☞ In Section 2.2.1, state the specific territory where the Employee will be selling.

2.2 Territory

2.2.1 The Employee will provide sales services in [Enter territory] (the "Territory.") The Employee will not make any sales outside of the designated Territory.

2.2.2 In its sole discretion, the Employer may change the Territory at any time and in any manner.

☞ In the next section, you will want to state whether this is a part time position, if so, make the appropriate changes.

2.3 Full Time & Energy. The Employee agrees to devote his / her full time and energy to the performance of his / her duties, subject to the Employer's direction and control, and the Employee will use his / her best efforts to sell the Merchandise in the Territory.

☞ Section 2.4 prohibits the Employee from engaging in any activities that compete with the Employer's business.

2.4 Prohibition Against Competitive Activities. During the term of this contract the Employee shall not, in any capacity, participate in any business that competes in any manner with the Employer's business.

☞ For the first insert in Section 2.5, state the reporting period. For the second insert, specify the nature of the information to be included in these reports. For example, the names and addresses of each customer and prospective customer that was called on, the specific time those calls were made, the quantity and description of all goods ordered, and any complaints.

2.5 Sales Reports. On the last working day of each [x] (Enter reporting period), the Employee shall complete and submit to the Employer a written report, on a form provided by the Employer, stating [x] (Enter information), and any other information or data that the Employer may request.

2.6 Rules & Regulations. The Employee shall strictly adhere to and obey all the rules and regulations now in effect or as subsequently modified relating to the conduct of the Employees.

2.7 Satisfactory Performance. The Employee's employment shall continue only as long as the services performed by the Employee are satisfactory to the Employer, in the Employer's sole and exclusive judgment.

3. Compensation

☞ In the first insert in Section 3.1, indicate the percentage of net sales to be paid to the Employee. For the second insert, indicate whose sales the Employee receives commissions on, in other words, does the Employee only receive a commission on sales he makes, or also through other Employees, or the Employer.

3.1 Commissions. As compensation for the services performed pursuant to this Agreement, the Employee shall receive a commission of [x]% of the Net Sales (defined below) of Merchandise sold to the customers in the Territory (Indicate whose sales).

☞ Make sure that this definition of Net Sales meets your needs.

3.2 Net Sales. Means the amount of gross sales less any returns and allowances attributable to those gross sales.

☞ The commissions do not accrue until the payment is actually received.

3.3 Accrual of Commissions. Commissions are earned when payment for the Merchandise is actually received by the Employer.

4. Expenses

4.1 Travel, Entertainment, & Other Expenses. It is recognized and agreed by the parties to this Agreement that in connection with the services to be performed for the Employer, the Employee will be obliged to expend money for travel, entertainment of customers, gifts, and similar business expenses. The Employee is authorized to incur reasonable business expenses for promoting the business of the Employer.

☞ Following are two Section 4.2's. Choose the one that fits your requirements best. If the Employee will be reimbursed on a regular basis as expenses are incurred, then select the first one. If the Employee will be given a lump sum on a regular basis, then select the second one.

4.2 Reimbursement. The Employer shall reimburse the Employee from time to time for all business expenses incurred by the Employee, provided that the Employee presents Adequate Documentation (defined below) to the Employer.

☞ ~ [Or] ~

☞ For the first insert, indicate the monthly lump sum amount. For the second insert, indicate when the money will be paid, for example, the last day of the month.

4.2 Reimbursement. In addition to commissions paid and regardless of actual expenses incurred, the Employer will pay the Employee a set sum of \$[x] per month to reimburse the Employee for its business expenses. This additional amount shall be paid \$[x]. The Employer will only be liable to the Employee for the repayment of any business expenses incurred by the Employee in any particular month as provided for in this section. The Employee shall present to the Employer Adequate Documentation for all business expenses.


- 🔊 In Section 4.3, indicate the maximum allowable amount to be spent on gifts for one person during a twelve month period. If you require additional or different types of records and information, make the appropriate changes below.

4.3 Adequate Documentation. The Employee is required to maintain an account book in which he / she will record the amount, type, and reason for each expenditure and the nature of the business benefit derived or expected to be derived as a result of the expenditure. Furthermore, the names, addresses, and other relevant information concerning each person who was entertained or given a gift should be listed. The gifts made to any one individual shall not exceed a total value of \$[x] in any twelve month period. In addition to an account book, the Employee must also keep documentary evidence of all expenses (receipts and paid bills).

- 🔊 You should be aware that some states may not enforce these types of Agreements, as they are Agreements not to compete. Of course it is good to have them, but you should consult with an attorney before ultimately relying on these provisions.

5. Employer's Rights to Records & Lists

5.1 Soliciting Customers after Termination of Employment

- 🔊 Basically, the Employee  agreeing not to solicit or provide others with any of the Employer's customers.

5.1.1 The Employee acknowledges and agrees that the names and addresses of the Employer's customers constitute trade secrets of the Employer and that the sale or unauthorized use or disclosure of any of the Employer's trade secrets by the Employee constitutes unfair competition. The Employee promises not to use or disclose any of the Employer's trade secrets or otherwise engage in any unfair competition with the Employer.

- 🔊 In Section 5.1.2, indicate the period following termination during which the Employee will not be able to use or otherwise provide others with the names or other information regarding the Employer's customers.

5.1.2 For a period of [Enter period] following termination, the Employee shall not either directly or indirectly disclose to any entity the names or addresses or any other information pertaining to any of the Employer's customers. The Employee further agrees not to call on, solicit, or take away any of the Employer's customers on whom he / she called or with whom he / she became acquainted during his / her employment with the Employer.

- 🔊 The Employee must return all customer records to the Employer upon termination.

5.2 Ownership of Customer Records. Regardless of who actually purchased the original book or record, all records relating in any manner whatsoever to the customers of the Employer, whether prepared by the Employee or otherwise, shall be the exclusive property of the Employer. Upon termination of the Employee's employment, all such books and records shall be immediately returned to the Employer.

6. Employee's Rights & Obligations

- 🔊 Section 6.1 allows the Employee to examine the Employers books and records as they relate to the Employee.

6.1 Examination of Books. The Employee shall have the right, either personally or by his / her accountant, to examine the Employer's books and accounts, insofar as they relate to the Employee's compensation. This right may be exercised at times mutually convenient to the parties at least once every six months.

☞ The Employee is required to provide his / her own automobile and agrees to hold the Employer harmless from any claims resulting from its use.

6.2 Employee Automobile

6.2.1 Employee shall, at his / her own expense, obtain an automobile for use in selling the merchandise and otherwise performing his / her job in the Territory. The Employee agrees to indemnify and hold the Employer harmless from any claims arising out of the operation of that automobile.

☞ Insert the required insurance coverage in Section 6.2.2.

6.2.2 Insurance on Employee's Automobile. The Employee agrees to keep in full force and effect, at his / her sole expense, an automobile insurance policy on any automobiles used at any time to carry out his / her employment duties. Each policy must include the name of the Employer as a named assured. Furthermore, the policy shall insure against liability for bodily injury in the minimum amount of \$[x] per person and \$[x] per occurrence and for property damage in the minimum amount of \$[x]. The Employee agrees to deliver a certificate evidencing each policy to the Employer upon demand.

☞ If you won't be obtaining a surety bond, delete section 6.3.

☞ If you will be obtaining a surety bond, insert the number of days allowed before terminating the contract, if the Employee does not qualify for this bond.

6.3 Qualification for Surety Bond. The Employee agrees to furnish all information and take any other steps necessary for the Employer to procure a fidelity bond conditioned on the Employee providing a true account of all moneys, goods, or other property that may come into his / her custody or charge. In its sole discretion, the Employer may select the surety company and the amount of the bond. The Employer will pay all premiums on the bond. This Employment Contract will immediately terminate upon the failure by the Employee to qualify for such a bond within [x] (Enter days) days from the date of this Agreement.

6.4 Physical Examinations. Upon the Employer's request, the Employee agrees to submit himself or herself for physical examination to a physician designated by the Employer annually or at any time requested.

6.5 Payment of Sums Due Deceased Employee. If the Employee dies prior to the expiration of the term of employment, any moneys that may be due under this Agreement as of the date of death shall be paid to his / her executors, administrators, heirs, personal representatives, successors, and assigns.

7. General Provisions

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

7.1 **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 may or may not want to make this deal public – at least limit that event by this agreement and work out if/how/when you want to do that later.

7.2 **Publicity.** Neither party will make any public announcement or issue any press release concerning the terms of this Agreement without the prior approval of both parties. If the parties mutually agree to issue a press release concerning the issues described in this Agreement, the parties shall cooperate to mutually agree on a press release describing the relationship based on this Agreement, and to issue such press release in the normal course of business.

☞ Make it clear that you will not try to hire away each others employees. If you do or it happens then there is compensation built-in and you can avoid further legal proceedings.

7.3 **Non-Solicitation.** Neither party shall solicit for employment or hire the other's current or future employees, either directly or indirectly, during the Term of this Agreement, without obtaining the other's prior written approval. Should an employee change employment from one party to the other, the new employer shall pay the old employer a fee equivalent to Twenty Percent (20%) of the employee's new compensation, annualized for the first year.

☞ 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.

7.4 **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 hereto 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 be included in this Agreement. Otherwise, it is as if it was not agreed to.

7.5 **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.

7.6 **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.

7.7 **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.

7.8 **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.

7.9 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.

7.10 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.

7.11 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.

7.12 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 3rd 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.

7.13 **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.

7.14 **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.

7.15 **Severability.** 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.

7.16 **Cumulative Rights.** Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative upon all other rights and remedies described in this section and allowed under applicable law.

7.17 **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.

☞ Every copy shall be just as valid as the original.

7.18 **Counterparts.** This Agreement may be executed in multiple counterparts, any one of which will be considered an original, but all of which will constitute one and the same instrument.

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

7.19 **Survival of Certain Provisions.** The warranties and the indemnification and confidentiality obligations set forth in the 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.

[Company]

[Employee]

[Owner/Founder]

[Name]

Title

Title

