

(Foreign) Sales Representative Agreement

- 🔊 Use this Sales Rep Agreement when engaging a sales rep outside of the USA – it includes a few additional provisions relevant to a foreign sales rep.
- 🔊 Except for above, we removed the word, “foreign” because to them, they’re not *foreign*...
- 🔊 See also, “Sales Representative” agreement and “National Account Manager” agreement.
- 🔊 The first part of the Memorandum should be completed and distributed to the other party along with a copy of the Foreign Sales Representative Agreement.

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

To:  **Name of other party]**

From: **[Owner/Founder]**

[Company]

Subject: **Sales Representative Agreement**

Attached is our “Sales Representative” Agreement in order to establish the terms and conditions of our working relationship.

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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- 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.

☞ For the first insert, enter the period of the appointment. For the second and third inserts enter the commencement date of the appointment. (Don't forget to remove the brackets or delete "non" depending on whether the relationship is exclusive or non-exclusive.

1.1 [Company] grants to the Representative the [non-] exclusive right to solicit orders within the Territory for Products destined for use or resale within that Territory for a period of [xxx months/years] beginning on the Effective Date.

1.2 The Representative hereby accepts that appointment and agrees to canvass diligently for purchasers and promote in all reasonable ways the sale of the Products in the Territory.

☞ In Section 1.3, define the specific territory where the Representative will be selling.

1.3 Territory. The Representative will provide sales services in the Territory. The Representative will not make any sales outside of the Territory.

☞ Section 1.4 allows [Company], at its option, to send in technical or other sales people to help the Representative or otherwise transact the business in the Territory.

1.4 [Company] reserves the right to send technical or sales staff to the Territory to assist in sales, to handle or conclude a sale or other transaction involving the Products, to contact potential customers, or to solicit business.



2. Representative's Obligations

☞ The Representative is required to maintain facilities and personnel and to provide them to [Company] as requested.

2.1 The Representative shall maintain facilities and personnel that are reasonably adequate to perform its obligations under the terms of this Agreement and shall make the same available to representatives of [Company] as required, but not on a permanent basis.

☞ If the Representative has other responsibilities (other than to [Company]), make the appropriate changes.

2.2 Full Time & Energy. The Representative agrees to devote his / her full time and energy to the performance of his / her duties, subject to [Company]'s direction and control, and the Representative will use his / her best efforts to sell the Products in the Territory.

☞ Following are two Section 2.3's. Select the appropriate one to fit your needs.

☞ If the Representative will be reimbursed for his expenses, select the first Section 2.3. If the Representative will not be reimbursed for any of his expenses, select the second Section 2.3.

2.3 Expenses. The Representative will cover all of its expenses without compensation or reimbursement by [Company], except as otherwise provided in this Agreement.

☞ ~ [Or] ~

2.3 Travel, Entertainment & Other Expenses

2.3.1 It is recognized and agreed by the parties to this Agreement that in connection with the services to be performed for [Company], the Representative will be obliged to expend money for travel, entertainment of customers, gifts, and similar business expenses. The Representative is authorized to incur reasonable business expenses for promoting the business of [Company].

2.3.2 Reimbursement. [Company] shall reimburse the Representative from time to time for all business expenses incurred by the Representative, provided that the Representative presents Adequate Documentation (defined below) to [Company].

- ☞ 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.

2.3.3 Adequate Documentation. The Representative 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 \$[xxx] in any twelve month period. In addition to an account book, the Representative must also keep documentary evidence of all expenses (receipts and paid bills).

- ☞ Section 2.4 prohibits the Representative from engaging in any activities that compete with [Company]'s business. If the Representative is to devote its full time and energy to the sale of [Company]'s products, delete everything but the first sentence of Section 2.4.

2.4 Representation of Other Products. During the term of this contract the Representative shall not, in any capacity, participate in any business that competes in any manner with Company's business. The Representative attaches to this Agreement a listing of the enterprise or enterprises that it presently represents, together with a list of the Products involved in the representation or representations. Upon the Representative's undertaking to present any other enterprise or to handle any other products during the course of this Agreement, the Representative will promptly notify [Company].

- ☞ For the first insert in Section 2.5, describe 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 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 [Insert reporting period], the Representative shall complete and submit to [Company] a written report, on a form provided by [Company], stating [Specify information], and any other information or data that [Company] may request.

2.6 Satisfactory Performance. The Representative's services shall continue only as long as the services performed by the Representative are satisfactory to [Company], in [Company]'s sole and exclusive judgment.

3. Compensation

- ☞ In Section 3.1, indicate the percentage of net sales to be paid to the Representative. For the second insert, indicate whose sales the Representative receives commissions on, in other words, does the Representative only receive a commission on sales he makes or through those made by [Company] and the Representative.

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

- ☞ 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. Net Sales does not include any shipping or other transport charges.

- ☞ You will notice that in Section 3.3, the commissions do not accrue until the payment is actually received.

3.3 Accrual of Commissions. The Commissions are earned when payment for the Products are actually received by [Company].

3.4 The Commissions shall be payable at the option of [Company] in the currency of the country in

which the sale is made, in United States dollars, or in the currency of the country in which the Representative has its principal office.

4. Company's Rights to Records & Lists

4.1 Soliciting Customers After Termination of Agreement

☞ Basically, the Representative is agreeing not to solicit or provide others with any of [Company]'s customers.

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

☞ Indicate the period following termination that the Representative will not be able to use or otherwise provide others with the names or other information regarding [Company]'s customers.

4.1.2 For a period of [90 days / 12 months] following termination, the Representative shall not either directly or indirectly disclose to any entity the names or addresses or any other information pertaining to any of [Company]'s customers. The Representative further agrees not to call on, solicit, or take away any of [Company]'s customers on whom it called or with whom it became acquainted during his / her employment with [Company].

☞ The Representative must return all customer records to [Company] upon termination.

4.2 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 [Company], whether prepared by the Representative or otherwise, shall be the exclusive property of [Company]. Upon termination of this Agreement, all such books and records shall be immediately returned to [Company].

5. Order Procedure

☞ The following section sets forth the order procedure. Most of this section is not commented on, as it is fairly straightforward. Obviously, your Company may have different procedures, you should make the appropriate changes.

5.1 All purchase orders and correspondence will be written in English.

5.2 No order is binding until and unless accepted by [Company]. All orders are subject to acceptance by [Company] in the manner prescribed by [Company]. The Representative shall not have authority to accept orders. The Representative shall not be entitled to any commission on any order refused by [Company], whatever the reason.

5.3 [Company] shall not be liable to the Representative in any event for the late delivery, wrong delivery, or non-delivery of the Products.

5.4 At [Company]'s request, the Representative shall help (without compensation other than as provided in this Agreement) [Company] in making collections, obtain information regarding (prospective) customers, and give any other assistance required by [Company].

5.5 If instructed by [Company], the Representative, at [Company]'s expense, shall prosecute or defend all claims arising from, and collect all sums owing to [Company] on account of, orders obtained by the Representative for the Products.

5.6 In soliciting orders, the Representative shall quote only the quantities, prices, terms, and specifications approved in advance by [Company]. The quotations or orders shall clearly state which unit

of measurement is used.

🔊 In Section 5.7, you need to state the location of the bank where [Company] will receive payment.

5.7 All payments shall be made directly to [Company] by confirmed, irrevocable letters of credit to be established in favor of [Company] for the full amount of the purchase price at a bank in [Enter location]. These letters of credit shall provide for payment upon presentation of invoice. All payments shall be in United States dollars.

6. Use of Trade Names

The Representative does not have authority to use [Company]'s name or the name of its subsidiaries in any manner whatsoever, except as expressly set forth in this Agreement, or as [Company] expressly authorizes in writing.

7. Termination

🔊 Section 7.1 provides either party an "out" based on the period of time for written notice (inserted in the brackets). Should you so desire, you can delete this section.

7.1 This Agreement may be terminated at any time by either party upon giving the other party not less than [30/60/90] days written notice of termination.

🔊 This next section lists a number of situations that cause the Agreement to terminate. You should add to or delete from this list where appropriate.

7.2 Termination Events. Unless otherwise waived by [Company], this Agreement immediately terminates without prior recourse to any judicial authority if the Representative:

- (1) Breaches the terms of Section 7.1 or breaches any other material obligation;
- (2) Becomes insolvent, is subject to a petition in bankruptcy filed by or against it, or is placed under the control of a receiver, liquidator, or committee of creditors;
- (3) Assigns or attempts to assign this Agreement without [Company]'s prior written consent; or
- (4) Ceases to function as a going concern or abandons the Territory.

7.3 Effect on Compensation. The Representative will be entitled to the commissions earned prior to the date of termination. The Representative will not be entitled to any compensation beyond the date of termination.

🔊 If the Representative's employment terminates, it must submit any claims it has for commissions within the period of time (in brackets) following the termination date.

7.4 Effect on Commissions. All claims for commissions are waived by the Representative if not made within [30/60/90 days] of the date of the termination.

🔊 In the event that this Agreement is terminated, the only commissions or other compensation that the Representative will be entitled to are those sums provided for in Section 7.3, earned commissions as of the date of termination.

7.5 The parties to this Agreement expressly understand and agree that, with the exception of those payments provided for in Section 7.3 of this Agreement, no indemnity or termination benefits will be due or payable to the Representative on termination of this Agreement, and the Representative expressly waives the application of any law, statute, collective contracts, or custom to the contrary.

8. Proprietary Information

🔊 This is a standard non-disclosure provision so that both parties can agree that any confidential information disclosed to the other is the property of the disclosing party and such information, in

addition to the terms of this Agreement, may not be disclosed to any third parties. The exception to this is when the disclosing party can prove that it already had the information, or the information becomes available to the general public. This non-disclosure requirement continues to be effective even upon or after termination of this Agreement.

Each party acknowledges that it may be furnished with or may otherwise receive or have access to information or material that relates to past, present or future products, software, research development, inventions, processes, techniques, designs or technical information and data, marketing plans, and so on. (“Proprietary Information”) Each party agrees to preserve and protect the confidentiality of the Proprietary Information and all of its physical forms, whether disclosed to the other party before this Agreement is signed or afterward. In addition, a party shall not disclose or disseminate the Proprietary Information for its own benefit or for the benefit of any third party. The previously stated obligations do not apply to any information which

- (1) is publicly known;
- (2) is given to a party by someone else who is not obligated to maintain confidentiality; or
- (3) a party had already developed prior to the day this Agreement is signed, as evidenced by documents.

Neither party shall take or cause to be taken any physical forms of Proprietary Information (nor make copies of same) without the other party's written permission. Within three (3) days after the termination of this Agreement (or any other time at the other party's request), a party shall return to the other party all copies of Proprietary Information in tangible form. Despite any other provisions of this Agreement, the requirements of this Section shall survive termination of this Agreement.

9. General Provisions

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

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.

☞ 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.

7.2 **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.

7.3 **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.

7.4 **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.

7.5 **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.

7.6 **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.

7.7 **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.

7.8 **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.

7.9. **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. [Company] and [Client] 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.

7.10 **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.

7.11 **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.

7.12 **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.

7.12 **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.


7.13 **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.

7.14 **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.

7.15 **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.

7.16 **Counterparts.** This Agreement may be executed in multiple counterparts, any one of which will be considered an original, but  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.

7.17 **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.

Representative

[Company]

[Name]

[Owner/Founder]

Title

Title