

Sales Representative Agreement

- 🔊 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.
- 🔊 See also Manufacturer's Representative Agreement
- 🔊 The first part of the Memorandum should be completed and distributed to the other party along with a copy of the Sales Representative Agreement.

Date: **[Date]**

To: **[Name of Sales Rep]**

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

Subject: **Sales Representative Agreement**

Attached to this memorandum is a "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.**

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
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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.

Sales Representative Agreement

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

Effective Date of this Agreement: **[Date]**

This Agreement is by and between **[Representative's Full Legal Name]**
(Representative's Abbreviated Name), Representative,
a **[State]**, **[Corporation/Partnership/Sole Proprietorship]**
with its principal place of business at **[Representative's Address]**,



AND **[Company Legal Name]**, ([Company]),
a **[State]**, **[Corporation/Partnership/Sole Proprietorship]**,
with its principal place of business at **[Address]**
[City], **[State]** **[Zip Code]**

Summary

[Company] and [Representative] agree that [Representative] will represent Company in a selling capacity, according to the following terms and conditions:

1. Appointment & Business Territory

- ☞ In Section 1, the Company appoints the Representative to sell its products in certain territories (that territory needs to be defined in Appendix A). Once that territory is defined, the parties will then need to determine whether they will be the only one selling in that territory.
- ☞ In regard to the first insert in Section 1, if the Representative is the only sales Representative the Company will be bringing on, then he is an exclusive sales Representative; if, however, there will be other sales Representatives in his territory or other sales Representatives in other territories, then the Representative is non-exclusive.
- ☞ The second insert in Section 1, determines whether the Representative is the exclusive Representative, non-exclusive Representative or the primary Representative for his territory. Exclusive would mean that there are no others. Non-exclusive would mean that there are others and they may or may not be the primary Representative. Primary would mean that there are others, but that he is somehow first. The difference between non-exclusive and primary is not significant, but primary seems to have a bit more weight than non-exclusive.

The Company appoints the Representative and the Representative agrees to act for the Company as its [non-]exclusive authorized sales Representative with the [primary / exclusive / non-exclusive] responsibility of servicing the business territory described in Appendix A ("Business Territory") subject to all of the terms and conditions of this Agreement.

2. Products

☞ Section 2 deals with the Products Representative, and how he is authorized to sell with the respective powers of the Representative and the Company in taking, accepting and pricing orders for those products.

☞ Section 2.1 refers to Appendix B (attached to the end of this Agreement) where the Company lists the products that the Representative is authorized to sell. If the insert is left in the section, then the Company can add or take away from the Products at its discretion. The Representative might want the insert to read "and as agreed to by both parties."

2.1 The products covered by this Agreement are those listed in Appendix B included in this Agreement by this reference, as amended from time to time [in the sole discretion of Company] (the "Products").

☞ Section 2.2 basically says that the Company is the sole decision maker as to the price and terms of the sale of the Products.

2.2 All sales by the Company shall be at such prices, on such terms and according to such reseller Agreements as established solely by the Company, and the Company has the right, in its sole discretion, at any time, to establish, change, alter or amend prices, terms and conditions of sale and reseller Agreements.

☞ Section 2.3 specifically states that the Representative cannot legally bind the Company because the Representative cannot accept an offer. Any orders taken by the Company can be accepted or rejected by the Company.

2.3 The Representative and his employees and agents, as the case may be, shall solicit and take but shall not accept orders for the Products and shall forward all such orders promptly to the Company. All orders and modifications to orders arranged through the Representative and his employees and agents are subject to acceptance, rejection or revocation solely by the Company as provided in Section 8 in this Agreement.

☞ Section 2.4 gives the Company the right to make changes to any and all aspects of its products, including prices.

2.4 The Company reserves the right, from time to time and in its sole discretion to modify, alter, change, improve or discontinue any or all of the products covered by this Agreement and to establish, change, alter, or amend the prices for any or all of such products.

3. Independent Contractor

☞ Section 3 states the nature of the relationship between the parties. It makes clear that the Representative is an independent contractor, not an employee of the Company, and, as such, is responsible for all of his costs and expenses as well as all reporting and payment of state and local taxes and obtaining any necessary licenses or government approvals.

3.1 The parties to this Agreement expressly understand and agree that the Representative is an independent contractor in the performance of each and every part of this Agreement and is solely and personally responsible for all of his employees and agents, if any, and his labor costs and expenses arising in connection with them and for any and all claims, liabilities, damages and debts of any type whatsoever that may arise on account of the Representative's activities, or those of his employees or agents, in the performance of this Agreement. The Company is in no manner associated or otherwise connected with the actual performance of this Agreement on the part of the Representative, nor with the Representative's employment of other persons or incurring of other expenses. Except as expressly provided in this Agreement, the Company shall have no right to exercise any control over the activities or operations of the Representative.

3.2 The Representative shall assume full responsibility for the proper reporting and payment of all

federal, state and local taxes, contributions and / or special levies imposed or required under unemployment insurance, social security, income tax (state and federal), and / or other laws or regulations, with respect to the performance of the Representative and his employees and agents of this Agreement, and the Representative agrees to exonerate, indemnify and hold the Company harmless from any liability, loss, damage or claim arising against or incurred or paid by the Company by reason of any failure by the Representative fully or timely to assume said responsibilities.

3.3 The Representative shall obtain such authorizations, licenses, permits and other governmental or regulatory agency approvals as are required for the performance of this Agreement by the Representative and / or his employees and agents, if any, and the Company shall have no responsibility for that and shall incur no liability arising from the Representative's possession, or lack of possession, of such requisite governmental authorizations and approvals.

4. Responsibilities of Representative

Section 4 identifies a number of obligations placed on the Representative and what happens in the event that the Representative fails to comply. Note, that the Company and / or the Representative may wish to add or delete requirements to the extent that they (do not) apply.

Section 4.1 (Section 4.1.1 through 4.1.10) should be reviewed carefully as they identify specific functions and duties of the Representative that, if unheeded, might result in a breach of this Agreement.

Section 4.1 requires the Representative to use his best efforts.

4.1 Representative's duties under this Agreement are as follows: The Representative shall use his best efforts to adequately promote the sales and service of the Products within the business area on a continuing basis in adherence with good business practices and shall diligently perform all other duties as mutually agreed upon in this Agreement.

Section 4.2 puts a significant burden on the Representative in that it requires him to meet or exceed quotas. By saying "In its sole discretion," the Representative is no longer required to meet or exceed quotas. This may be important, since failure to meet or exceed quotas would be a breach of this Agreement.

4.2 [In its sole discretion] the Representative shall solicit and forward to the Company sufficient orders for the Products so as to meet or exceed its quarterly sales quotas as established by the Company in its discretion from time to time.

Like Section 4.2 above, Section 4.3 places an obligation on the Representative to employ others to perform his obligations to the Company. Again, by adding "In its sole discretion," the Representative is free to determine when and if he needs to bring on additional staff. Without adding those words, the Company might argue that the Representative is in breach if he does not hire staff.

4.3 [In its sole discretion] the Representative shall employ sufficient qualified employees and agents to assist in diligently performing all of its duties as mutually agreed upon in this Agreement.

Section 4.4 merely requires the Representative to keep in touch with the Company and provide them with certain routine information.

4.4 The Representative and his employees and agents shall establish contact and provide liaisons with key personnel of the Company's customers in the business area (1) prior to order requirements; (2) to service various technical needs and (3) to resolve Product-related problems.

Section 4.5 requires the Representative to inform the Company of any problems with the Products, and in the event that any customers make recommendations or suggestions as to modification of those Products, the Representative has no rights to those changes; they belong to the Company. It also states that if the Representative makes any misrepresentations relating to those changes (i.e.,

that the Company will pay for the suggestions or modifications), that the Representative is responsible for any resulting liability.

4.5 The Representative shall keep the Company informed as to any problems encountered with the Products and as to any resolutions arrived at for those problems and shall communicate promptly to the Company any and all modifications, design changes or improvements of the Products suggested by any customer of the Company or by any employee or agent of the Representative. The Representative further agrees that the Company shall acquire any and all rights and interests in any such suggested modifications, design changes or improvements of the Products without the payment of any consideration for such either to the Representative, his employees or agents or to any customer. The Representative further agrees to indemnify and hold the Company harmless from any and all claims, liability, damages or expense (including court costs and attorneys' fees) arising from or related to any misrepresentation made by the Representative (or by his employees or agents) to any person (including any employee or agent of the Representative or any customer) in connection with any possible payment or other possible consideration by the Company in exchange for any such suggested modifications, design changes or improvements of the Products.

☞ Section 4.6 requires the Representative to provide the Company with copies of every letter, document, and any other correspondence that it sends or receives to or from its customers. Again, by adding the words, "In [] sole discretion," the Representative may choose what, if any, correspondence it will share with the Company.

4.6 [In its sole discretion] the Representative shall supply the Company with copies of all correspondence sent by the Representative to the Company's customers. Such correspondence shall include, but shall not be limited to, all letters, quotes, proposals and acknowledgment and all revisions and modifications to them.

☞ Section 4.7 requires the Representative to provide the Company with regular reports about the customers, Products and distribution. You should determine how often this information is required.

4.7 The Representative shall submit to the Company reports on a [monthly / quarterly / yearly] basis containing such pertinent information about the customers, the Products and their distribution within the business area as the Company may reasonably request including, without limitation, credit information in connection with the customers, the volume and dollar amount of orders arising through the Representative, the names and other identification of all possible purchasers of the Products for such period and any pending negotiations for the sale of Products.

☞ Section 4.8 requires the Representative to submit to the Company a sales forecast at certain times of the year. You should fill in the frequency of desired sales forecasts within the brackets.

4.8 The Representative shall submit to the Company a market sales forecast on the [fifteenth] day of [March, June, September and December] for each ensuing [quarters] during the term of this Agreement in form and substance satisfactory to the Company and including such information as the Company may reasonably request.

☞ Section 4.9 requires the Representative to help the Company with sales campaigns and requires the Representative to attend trade shows. The parties may wish to list (in the brackets) the shows and conventions the Representative will be expected to attend.

4.9 The Representative shall assist the Company in promotional sales campaigns and attend trade and industry shows or conventions affecting the business area. [These shows and conventions include:

- xxx
- xxx
- xxx

☞ The Representative must comply with the Company order procedures.


4.10 The Representative shall comply with all order entry and sales lead follow-up procedures established by the Company.

☞ In the event that the Representative does not comply with one or more of the requirements listed above, that would constitute a breach of this Agreement. At such time, the Company would give notice of this breach to the Representative who would have the amount of time (entered in brackets) to cure or fix his breach. In the event that the Representative cannot or does not fix the breach, the Company may terminate this Agreement. You should determine how much time the Representative will have to fix the breach. It should be as least enough time to fix the breach.

4.11 The failure of the Representative to comply with any of his obligations defined in Section 4.1 of this Agreement shall constitute a breach of this Agreement and shall entitle the Company to give notice to the Representative requiring the Representative to cure the breach. If any such breach is not cured within thirty (30) days after receipt of such notice, the Company shall be entitled to immediately terminate this Agreement in accordance with Section 10.2.1.

5. Samples & Equipment

☞ Section 5 states that anything tangible given to the Representative by the Company, is owned by the Company and the Representative must take care of those items and return them upon request.

Any samples, demonstration  equipment or sales tools that may, in the Company's sole discretion, be supplied to the Representative shall remain the property of the Company and shall be held by the Representative as a bailee of the Company. The Company may charge the account of the Representative for any such samples, equipment or tools not returned to it in good order upon request.

5. Compensation

☞ Section 6.1 states the base commission rate (the amount entered in the brackets). The Representative receives a pro rata portion of that payment. Thus if his commission rate is 10% and \$200 of a \$600 order is received, he gets \$20. He does not get a percentage of shipping, taxes, or other related charges.

☞ For the first insert in Section 6.1, insert the appropriate percentage to be paid to the Representative. He may also be paid a flat fee. For the second insert, enter the period when the Representative will receive his payments. Usually, it is the month following the payment to the Company.

The Representative shall be entitled to a total commission for each individual sale of the Products arranged solely through the Representative equal to [x]% percent of the net invoice of each sale. The Representative shall be paid a pro rata portion of each partial or total payment(s) made by a customer on any individual sale equal to the applicable commission percentage provided above times the product of the ratio of the net invoice price to the total purchase price of the Products being sold times the actual payment(s) being made, which said commission payment(s) shall be payable to the Representative within the [next calendar month] following any such partial or total payment(s) made by the customer up to the maximum total commission for each individual sale provided above. The term "net invoice price" shall mean the total invoice price at which the sale is invoiced to the customer, but excluding shipping and mailing costs, taxes, insurance, any allowances or discounts granted to the customer and all charges for installation or instruction.

☞ Section 6.2 describes the amounts to be deducted from those sums paid to the Representative. It says that commissions paid or credited to the Representative on products returned will be deducted from the amounts paid to him.

6.2 There shall be deducted from any sums due the Representative: an amount equal to commissions previously paid or credited to the Representative on sales where all or substantially all of the consideration relating to that has since been returned to the customer or in the event only a portion of such consideration has since been returned to the customer or allowances have been credited to the

customer by the Company, the pro rata amount of previously paid or credited commissions on such returns or allowances.

☞ Section 6.3 states that in the event that an account is uncollectable and commissions have been paid or credited to the Representative, those amounts will be deducted from money due the Representative.

6.3 A pro rata amount of commissions previously paid or credited to the Representative on sales where less than the total purchase price of the Products is ultimately paid by the customer, whether by reason of the customer's bankruptcy, insolvency or for any other reason whatsoever that, in the Company's judgment, renders the account uncollectable in whole or in part, in that event, if any sums are later realized upon the uncollectable account, the Company will pay the Representative the percentage of commission applicable to the amount of the actual collection.

☞ Section 6.4 deals with conflicts between two or more Representatives. As written, the Company has sole discretion to determine who gets what commission in the event that a Representative presents an order from a customer in another Representative's territory.

6.4 When an order received by the Company through the Representative has been influenced by another of the Company's sales Representatives, or the Product is to be delivered outside of the Representative's business area, the Company may, in its sole discretion, but shall not be required to, designate a commission split between the Representative and any one or more other authorized sales Representative(s), as the case may be. Any such commission split may be discussed with the sales Representatives involved, but the Company shall make any decision in its own sole discretion, and any such decision shall be final.

7. Company Responsibilities

☞ The next section sets forth the Company's responsibilities with respect to the Representative. They are all fairly straightforward, but should be reviewed to ensure that they are acceptable to the parties.

7.1 Company shall have the following responsibilities:

- (1) provide the Representative with sales and technical information regarding the Products;
- (2) provide the Representative with a reasonable amount of literature pertaining to the Company and to the Products;
- (3) inform the Representative within a reasonable time of any changes in the Products, prices, terms of payment, delivery schedules and / or Product Warranties;
- (4) subject to the other terms and conditions of this Agreement (including, without limitation, Section 8 of this Agreement), use its best efforts to fill accepted orders arranged through the Representative promptly, insofar as practical and consistent with the Company's various policies, production capacity and shipping schedule; and
- (5) compensate the Representative in accordance with this Agreement.

8. Acceptance of Business

8.1 All customer orders for Products submitted through the Representative according to this Agreement are subject to acceptance or rejection by an officer of the Company, and nothing contained in this Agreement obligates the Company to accept any such order placed through the Representative. No quotation, order or sale will be binding upon the Company until so accepted and confirmed by the Company. The Company will notify the Representative of the acceptance or rejection of all orders submitted through the Representative. Despite any other provision of this Agreement, failure to fill all or

part of any accepted order arising through the Representative for any reason whatsoever shall not render the Company liable to the Representative in any manner whatsoever. The Company shall not be liable for any liability, damages or penalties for failure or delay in furnishing Products, materials or labor by reason of any cause whatsoever, nor shall the Company be liable for any incidental or consequential damages resulting from that.

☞ Section 8.2 has basically the same effect as Section 8.1. The Representative has no ability to bind the Company unless the Company gives its express authorization to do so.

8.2 The Representative shall have no right, power or authority to bind or obligate the Company in any manner whatsoever or to affix his name or signature on behalf of the Company unless expressly authorized to do so in writing by the Company. The Representative shall not have the right to use the name, logotype, trademarks or slogans of the Company without the written consent of the Company and any such use with such consent of the Company shall only be in the manner expressly approved by the Company.

9. Product Warranty

☞ Section 9 sets the restrictions on the Representative regarding any warranties the Company may have regarding its products. The Representative cannot modify any of the representations or warranties of the Company.

☞ Furthermore, the Representative cannot make any promises that are not consistent with the Company's policies. In other words, if the Company promises delivery of the product within 10 days of accepting an order and you promise 5 days, any liability resulting from the order not arriving in 5 days becomes the Representative's.

The Representative shall have no right or authority, express or implied, directly or indirectly, to alter, change, enlarge, limit or otherwise modify the representations or warranties made by the Company in connection with the Products beyond those expressly contained in the Company's written Product Warranty, a copy of which is included in Appendix C and incorporated in this Agreement by this reference. In addition, the Representative shall make no delivery promises inconsistent with the authorized delivery schedule of the Company in effect from time to time under this Agreement. In the event that the Representative makes unauthorized representations, warranties or guarantees beyond those contained in the Product Warranty or makes promises in connection with the sale, use, distribution, handling or delivery of the Products that are inconsistent with the Company's policies, as existing from time to time or at any time, the Representative shall indemnify and hold the Company harmless from any expenses, claims, damages or liability of any nature arising from or related to any such unauthorized representations, warranties or guarantees or from any such inconsistent promises, including without limitation, court costs and attorneys' fees.

10. Term & Termination

☞ In the first set of brackets, is the initial term of this Agreement. In the second set of brackets is the extension or renewal term of the Agreement. It may be greater than or less than the initial term.

☞ In the third set of brackets is the notice period that either party is required to give before the expiration of the initial term or any extension. So, if this period states 90 days and the initial term is for 1 year and it started January 1, in order to prevent the Agreement's automatic extension, one of the parties would have to give notice to the other no later than October 1. Note that an Agreement can be canceled anytime where all parties to the Agreement agree to its cancellation.

10.1 Unless terminated earlier as provided in this Agreement, this Agreement shall remain in effect for an initial term of [ONE (1)] year from its effective date, and such term and each term subsequently shall be automatically extended for successive [ONE (1)] year periods ("extension terms") unless at least [90] days prior to the end of the initial term or any extension term either party to this Agreement gives written

notice of his or its intention not to extend the term of this Agreement.

☞ Section 10.2 describes situations where the Agreement can be terminated.

☞ In the following situations, the Company can terminate the Agreement immediately. "For cause" means that there is a reason and it must be one of the following.

10.2 This Agreement may be terminated as follows: for cause, immediately upon the occurrence of any of the following events:

(1) if the Representative ceases to do business, or otherwise terminates his business operations; (2) if the Representative shall fail to secure or renew any license, permit, authorization or approval for the conduct of his business or if any such license, permit, authorization or approval is revoked or suspended;

(3) in accordance with Section 4.2 of this Agreement, if the Representative breaches any provision of Section 4.1 of this Agreement;

(4) if the Representative shall breach any other provision of this Agreement; or

(5) if the Representative seeks protection under any bankruptcy, receivership, trustee, creditors arrangement, composition or comparable proceeding or if any such proceeding is instituted against the Representative.

☞ Here, in Section 10.3, either party can terminate the Agreement for any reason whatsoever so long as the party that wishes to terminate the Agreement gives the other party at least the period of notice required (entered in brackets). Note, that you can delete this section altogether if you don't want to be able to terminate the Agreement without cause. Most Agreements don't have this sort of provision. Enter the amount of notice required (in the brackets) before the Agreement may be terminated by either party without cause.

10.3 Without any cause, solely for the convenience of the terminating party, upon issuance of at least [30] days written notice of that by the terminating party to the other party.

☞ Where the Agreement is terminated for cause, the effective date of the termination is the date the Company gives notice of termination to the Representative. If it is terminated for other reasons (or no reason) pursuant to Section 10.3, then the effective date of the termination is the term following notice to the non-terminating party (entered in the brackets). Insert the same period of time as you entered in 10.3 above.

10.4 In the event this Agreement is terminated according to Section 10.2 of this Agreement the effective date of termination shall be the date the Company serves notice of termination on the Representative. In the event this Agreement is terminated according to Section 10.3 of this Agreement, the effective date of termination shall be the [30th] day following the date the terminating party serves notice of termination on the other party.

In the event this Agreement is terminated for any reason whatsoever, the Company shall not be liable for the payment of any commission to the Representative on orders accepted by it after the termination date.

Any deal that is closed verbally or in writing by the Representative while contracting for the Company, will be subject to commissions even if the Representative is terminated. Commissions will be paid for as long as the agreed upon promotion is in affect.

☞ In the event that the Representative / Company is somehow damaged by the termination, the Company / Representative will in no way be liable.

☞ If you want this Agreement to be in the best interests of the Company then use the Company, the Representative, the Company in that order in the brackets below. If, on the other hand, you want this section to benefit the Representative, then use the Representative, the Company, the Representative in that order.

10.5 Neither the Company nor the Representative shall incur any liability whatsoever for any incidental,

special or consequential damages, losses or expenses of any kind suffered or incurred by the Company or the Representative arising from or incident to termination of this Agreement by the Company or the Representative respectively.

☞ If and when the Agreement is terminated, the Representative must no longer use the Company's name, trademarks, and so on. Furthermore, it must return anything in its possession owned by the Company.

10.6 In the event this Agreement is terminated for any reason whatsoever, the Representative shall immediately discontinue its use (if any) of the name, logotype, trademarks or slogans of the Company and the trade names of any of the Products and the Representative shall immediately discontinue all representations or statements from which it might be inferred that any relationship exists between the Company and the Representative. In addition, the Representative shall immediately return to the Company at the Representative's expense, all samples, demonstration equipment, sales materials, catalogs and literature of the Company then in the possession of the Representative.

☞ The Company does not lose its right to terminate where it does not act immediately upon the happening of one of the items for cause.

10.7 The failure of the Company to exercise its rights of termination upon the accrual of any cause for termination under this Agreement shall not operate to create a waiver or estoppel to exercise such rights at a later date upon continued or further default.

11. Proprietary Information & Non-Disclosure

☞ Section 11 is a standard non-disclosure Agreement whereby the Representative agrees that any confidential information disclosed to it by the Company is the property of the Company and must not be disclosed to third parties. The exception to this is when the information becomes available to the general public.

The Representative acknowledges that, in the course of performing his duties under this Agreement, he may obtain information relating to the Products and to the Company that is of a confidential and proprietary nature ("Proprietary Information"). Such Proprietary Information may include, but is not limited to, trade secrets, know-how, inventions, techniques, processes, computer programs, schematics, data, customer lists, financial information and sales and marketing plans. The Representative and his employees and agents shall at all times, both during the term of this Agreement and after its termination, keep in trust and confidence all Proprietary Information and shall not use such Proprietary Information other than in the course of his duties under this Agreement, nor shall the Representative or his employees and agents disclose any of such Proprietary Information to any person without the Company's prior written consent. The Representative acknowledges that any such Proprietary Information received by the Representative shall be received as a fiduciary of the Company. The Representative further agrees to immediately return to the Company all Proprietary Information in the Representative's possession, custody or control in whatever form held (including all copies of all written documents relating to that) upon termination of this Agreement or at any time, or from time to time, upon the request of Company.

12. 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.

☞ 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.

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

12.2 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.

12.3 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.

12.4 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.

12.5 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.

12.6 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.

12.7 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.

12.8 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.

12.9 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.

12.10 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.

12.10 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.

12.11 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.

12.13 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.

12.14 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.

[Company]

Representative

[Owner/Founder]

[Representative]

Title

Title

Appendix A

Business Area / Territory to Service

- Xxx
- Xxx
- xxx



Appendix B

Products & Price List

Prices are exclusive of all federal, state, municipal or other government excise, sales, use, occupation or like taxes now in force or enacted in the future and, consequently, are subject to any increase equal in amount to any tax the Company may be required to collect or pay upon the sale or delivery of the Products purchased.

Product No.	Description	Price
123-AA	Widget	\$99.99
456-BB	Large Widget	\$39.99



Appendix C

Product Warranty

xxx

