

MAFSI EXEMPLAR CONTRACT

NOTE: THIS EXEMPLAR CONTRACT DOES NOT FIT ALL PRINCIPAL-REP RELATIONSHIPS, WHICH ARE NOT ONE-SIZE-FITS-ALL. REPS SHOULD CAREFULLY REVIEW IN CONSULTATION WITH THEIR ATTORNEY TO TAILOR THIS FORM AGREEMENT TO THEIR INDIVIDUAL SITUATION.

MAFSI DOES NOT PROVIDE LEGAL ADVICE, AND MAKING THIS EXEMPLAR CONTRACT AVAILABLE SHOULD NOT BE CONSTRUED AS THE PROVIDING OF LEGAL ADVICE BY MAFSI OR THE BELOW AUTHOR. NO ATTORNEY-CLIENT RELATIONSHIP IS CREATED BY REVIEWING OR MAKING USE OF THIS EXEMPLAR CONTRACT.

Document prepared by:

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[MAFSI EXEMPLAR]
INDEPENDENT SALES REPRESENTATIVE AGREEMENT

This Independent Sales Representative Agreement (the “Agreement”), is made as of the _____ day of _____, 20__, between _____ [insert legal name of entity], a _____ [insert type of entity and state of formation] (the “Company”), and _____ [insert legal name of entity], a _____ [insert type of entity and state of formation] (the “Representative”).

RECITALS

WHEREAS, the Company is a manufacturer of _____ [insert general description of products] and related products; and

WHEREAS, the Company and the Representative desire that the Representative solicit and promote the sales of the Company’s products in accordance with this Agreement;

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Appointment and Acceptance. The Company appoints the Representative as its exclusive independent sales representative to solicit and promote the sales of the products set forth on Exhibit A attached hereto (the “Products”) [in the territory set forth on Exhibit B attached hereto (the “Territory”),] [to the accounts set forth on Exhibit B attached hereto (the “Accounts”)], and the Representative accepts the appointment and agrees to solicit and promote the sales of the Products [within the Territory] [from the Accounts]. The Representative shall at all times have the right to solicit and promote the sales of Products [in the Territory] [from the Accounts], and at no time during the term of this Agreement shall the Company take any [customer] [Account] “in house” or otherwise limit the Representative’s right to solicit or promote the sales of Products [in the Territory] [from the Accounts] or limit the Representative’s right to receive Commissions (as hereinafter defined) on account of sales of Products [to customers in the Territory] [to the Accounts].

2. Compensation.

(a) During the period beginning on the date hereof and continuing until _____, the Company shall pay to the Representative a retainer (the “Retainer”) in the amount of \$ _____ per month, payable in advance on the first day of each month. The Retainer shall be in addition to all Commissions (as defined below) payable to the Representative in accordance with this Agreement.]

(b) [In addition to the Retainer, the] [The] Company shall pay Representative commissions (“Commissions”) for all Orders (as defined below) for Products shipped to [customers in the Territory] [the Accounts] [at the rate(s) set forth on Exhibit C attached hereto] [at the rate of ____% of the Net Invoice Price paid by a [customer] [Account]]. For purposes hereof, the term “Net Invoice Price” means the invoice price less separately stated costs for any sales or excise taxes, insurance, shipping and freight, and rebates and allowances. For purposes of this Agreement, the term “Order” includes, without limitation, purchase orders as well as “planned orders,” “blanket orders,” “follow-on orders,” and volume purchase agreements without specified delivery dates.

(c) Commissions are earned when the Company accepts an Order, but are not due and payable until the 20th day of the month immediately following the month in which the Company has shipped Products to [a customer] [an Account]. On at least a monthly basis, the Company shall send the Representative a commission statement listing, at minimum, all sales made [into the Territory] [to the Accounts], each sale for which Commissions are being paid to the Representative for the current period, as well as listing all Commissions due and owing to the Representative from any prior period which have not been paid. The Company shall also provide to the Representative, not later than the 20th day of each month, a POS report with respect to all distribution sales to [customers in the Territory] [Accounts]. If Commissions are paid on an amount less than the invoiced amount, documentation will be supplied adequate to explain the difference.

(d) [OMIT THIS PARAGRAPH IF THIS AGREEMENT IS FOR SPECIFIC ACCOUNTS] If the engineering, Order placement, and shipment of Products take place in more than one territory in which the Company has an independent sales representative, the Company shall pay a split Commission as follows: (i) _____ percent (___%) of the Commission shall be paid to the representative in whose territory the engineering was performed, (ii) _____ percent (___%) of the Commission shall be paid to the representative in whose territory the Order was placed, and (iii) _____ percent (___%) of the Commission shall be paid to the representative in whose territory the Products were shipped. In no event shall the Company retain any portion of commissions due for sales involving split Commissions.

(e) There shall be deducted from any Commissions payable to the Representative an amount equal to (i) Commissions previously paid on sales of Products which have since been returned by [a customer] [an Account] or on allowances credited to [a customer] [an Account] by the Company, and (ii) Commissions previously paid on sales which the Company shall not have been fully paid by the [customer] [Account] whether by reason of bankruptcy, insolvency, or any other reason which, in Company’s commercially reasonable judgment, renders the invoice uncollectible. If any sums are ever realized upon such uncollectible invoices, whether prior to or after the expiration or earlier termination of this Agreement, the Company will pay the Representative the Commission applicable at the time of the original sale upon the net proceeds of such collection, regardless of when such sums are received by the Company.

3. **Acceptance of Orders.** All Orders are subject to acceptance or rejection by the Company at its home office and to the approval of the Company's credit department. The Company shall be responsible for all credit risks and collections.

4. **Terms of Sale.** All sales shall be at such prices and upon such terms as shall be established by the Company from time to time. The Company shall advise the Representative in writing of all such changes in a timely manner. The Representative shall not accept Orders in the Company's name or make price quotations or delivery promises without the Company's prior approval.

5. **Responsibilities of the Representative.** The Representative:

(a) shall devote such time as is reasonably necessary to solicit and promote the sales of Products to [customers in the Territory] [Accounts];

(b) shall conduct all of its business in its own name and in such manner as it sees fit, pay all expenses of its offices and activities, and be responsible for the acts and expenses of its employees;

(c) shall make available to the Company's credit department any information which it may have from time to time relative to the credit standing of any [customer in the Territory] [Account]; and

(d) shall not, without the Company's prior approval, accept, alter, enlarge, or limit Orders, make representations or guarantees concerning any Product or accept the return of, or make any allowance for, any Product, unless the same shall have been approved by the Company.

6. **Responsibilities of the Company.** The Company:

(a) shall be solely responsible for the design, development, supply, production and performance of its Products and the protection of its patents, trademarks and trade names;

(b) shall furnish to the Representative, at no expense to the Representative, samples, catalogs, literature and any other material necessary for the proper promotion and sale of the Products. Any literature which is not used or samples or other equipment belonging to the Company shall be returned to the Company at its request and at its cost;

(c) shall refer to the Representative all sales leads received by it from [customers and prospective customers in the Territory] [Accounts];

(d) shall, upon the Representative's reasonable request, provide the Representative with access to the Company's books and records pertaining to the sale of Products [in the Territory] [to the Accounts]; and

(e) shall not, directly or indirectly, during the term of this Agreement and for a period of eighteen (18) months following the expiration or earlier termination of this Agreement, solicit, hire, retain, or otherwise engage or go into business with any individual or entity employed, retained or subcontracted by the Representative within the prior six (6) months

7. Relationship of the Parties. Nothing in this Agreement shall be construed to constitute the Representative as the partner, employee or agent of the Company, nor shall either party have any authority to bind the other in any respect, it being intended that the Representative shall remain an independent contractor, and each party shall be responsible only for its own actions. The Representative will have sole control of the manner and means of its performance under this Agreement. The Company shall not have the right to require the Representative to do anything which would jeopardize the relationship of independent contractor between Company and Representative.

8. Indemnifications.

(a) The Company shall indemnify, defend, and hold the Representative harmless from and against, and to pay all of the Representative's losses, costs, damages and expenses, including, without limitation, reasonable attorneys' fees and costs, which the Representative may sustain or incur on account of: (i) any alleged infringement of any patent, copyright, trademark, trade name, or other intellectual property right of any third party; (ii) any breach of product liability warranty claim in any way resulting from the sale of Products, (iii) any injury or death to any person or damage to any property, or both, caused by any Products; and (iv) any claim that the products fail to comply with any applicable law, statute, ordinance, rule, regulation, or order. A certificate of insurance naming the Representative as an additional insured party on the Company's product liability insurance policy will be made available to the Representative upon the signing of this Agreement. This Section 8 shall survive the expiration or earlier termination of this Agreement.

(b) The Representative shall indemnify, defend, and hold the Company harmless from and against, and to pay all of the Company's losses, costs, damages and expenses, including, without limitation, reasonable attorneys' fees and costs, which the Company may sustain or incur on account of any third party claim which arises from: (i) any negligent or intentional act or omission of the Representative, and (ii) any material breach of this Agreement by the Representative.

9. Term and Termination. This Agreement shall commence on the date hereof, and shall continue until the _____ (___) anniversary of the date hereof, and thereafter shall automatically renew for successive one (1) year periods, unless either party gives written notice to the other of its intent not to renew this Agreement not later than sixty (60) days prior to the end of the initial term or the then current renewal term. Notwithstanding the foregoing, this Agreement may be terminated by either party upon a material breach of this Agreement by the other party, provided that the party claiming such breach shall give the other party written notice thereof setting forth the alleged breach in reasonable detail, and the other party shall have thirty (30) days from the date of its receipt of such notice to cure any alleged breach.

10. Rights upon Termination.

(a) Unless this Agreement is terminated by the Company as a result of the Representative's material breach hereof, which breach is not timely cured as provided in Section 9 above, then notwithstanding such termination, the Representative shall be entitled to receive Commissions in accordance with Section 2 above on all Orders for Products received by the Manufacturer for shipment [into the Territory] [to the Accounts], regardless of whether procured by Representative, during the remaining portion of the then current term of this Agreement, and for a period of ninety (90) days following the end of such remaining term of this Agreement, notwithstanding the date on which such Orders are accepted or the Products are shipped. Representative shall further be entitled to receive Commissions on all Orders for Products procured by Representative prior to termination and received by Company after termination for the life of the part or program, notwithstanding the date on which such Orders are accepted or the Products are shipped. Upon the termination of this Agreement as a result of the Representative's material breach hereof, which breach is not timely cured as provided in Section 9 above, the Representative shall be entitled to receive Commissions in accordance with Section 2 above on all Orders for Products received by the Manufacturer for shipment [into the Territory] [to the Accounts] through the effective date of the termination of this Agreement, notwithstanding the date on which such Orders are accepted or the Products are shipped.

11. Entire Agreement; Amendment. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, or arrangements. This Agreement may only be amended by a writing signed by the parties.

12. Law Governing. This Agreement shall be governed by, construed, and enforced in accordance with the internal laws of the State of _____, without regard to the choice of law principles of the State of _____ or of any other jurisdiction.

13. CONSENT TO JURISDICTION AND VENUE. THE PARTIES AGREE THAT ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY, SHALL BE INSTITUTED SOLELY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF _____, OR ANY COURT OF THE STATE OF _____ LOCATED IN _____ COUNTY, AND EACH PARTY IRREVOCABLY SUBMITS AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS AND WAIVES ANY AND ALL OBJECTIONS TO JURISDICTION OR VENUE THAT ANY SUCH PARTY MAY HAVE UNDER STATE OR FEDERAL LAW.

14. Severability. In case any one or more of the provisions in this Agreement should be declared by a court, or governmental agency or department to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

15. Headings. The headings contained in this Agreement are for convenience of reference only, and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent, of this Agreement or any provision hereof.

16. Non-waiver. No failure by either party hereto to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder by either party preclude any other or future exercise of that right or any other right hereunder by that party.

17. Assignment. This Agreement may not be assigned by the Representative without the prior written consent of the Company. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

18. Notices. All notices hereunder shall be given in writing via registered or certified mail, return receipt requested, postage pre-paid, or overnight courier, addressed to the parties as follows:

If to the Company:

Attn: _____

If to the Representative

Attn: _____

or at such other address as may from time to time be designated by either party to the other in accordance with this section. All notices and communications given hereunder shall be effective and deemed given, if mailed, on the date of receipt, as evidenced by the acknowledgment of receipt issued with respect thereto by the applicable postal authorities and, if delivered by overnight courier, on the date of receipt, as evidenced by the signed acknowledgment of receipt of the person to whom such notice or communication shall have been addressed, as applicable.

19. Attorneys' Fees. In the event of any dispute between the parties arising from or relating to this Agreement, the prevailing party in such dispute shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and costs arising from or related to such dispute.

20. Counterparts; Electronic Delivery. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A counterpart of this Agreement executed and delivered by facsimile or electronic mail shall be equally as effective as delivery of a manually executed

counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile or electronic mail shall also deliver a manually executed counterpart of this Agreement, but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

THE NEXT PAGE IS THE SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Independent Sales Representative Agreement on the day and year first above written in multiple counterparts, each of which shall be considered an original.

[COMPANY]

By: _____
Name: _____
Title: _____

[REPRESENTATIVE]

By: _____
Name: _____
Title: _____

EXHIBIT A
PRODUCTS

[All products from time to time offered for sale by the Company.]

or

[List specific products to be promoted by the Representative, adding that “Products also includes any other products of the Company for which the Representative procured an Order which is accepted by the Company.”]

EXHIBIT B

[TERRITORY] [ACCOUNTS]

EXHIBIT C
COMMISSION RATE(S)