



Suggested Agreement: Sales Rep Employee Agreement

Published as a service by:
Manufacturers' Agents Association for the Foodservice Industry (MAFSI)
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(Date)

(Name of Sales Associate)

(Address)

(City/State/Zip)

Dear (Name of Sales Associate):

This will confirm your engagement as our employee, pursuant to the terms and conditions set forth herein.

1. Employment - (Name of rep firm) (The Company) hereby employs (Name of employee) (The Employee) to loyally render exclusive and full-time services as a sales employee for the Company.
2. Duties - The Employee shall work an eight-hour day, five days per week, excluding holidays, out of the Company's premises located at (Specify), and throughout the Employee's territory as more fully described herein. The Employee shall devote his/her best efforts to the affairs of the Company and shall perform such duties as shall be directed by the supervisors and officers of the Company.
3. Acceptance - In consideration of one dollar (\$1.00) and the Company's employing or continuing to employ the Employee, the Employee hereby accepts such employment and agrees to render such services. As an exclusive and full-time employee, the Employee will not, during the term hereof render any services for other corporations, businesses or entities directly or indirectly in competition with the Company.
4. Terms of Employment - The Company employs the Employee at will and may terminate the Employee at any time without prior notice with or without cause.
5. Compensation - The Company agrees to pay the Employee a salary at the rate of (Specify \$X) per (Specify) as consideration for services rendered pursuant to this Agreement. Salary increases will be at the Company's discretion and be based, among other things, on productivity. The salary set forth hereinabove shall be payable in accordance with the regular payroll practices of the Company.

In addition, the Company shall pay the Employee a commission as listed on Exhibit A of this Agreement. Said commission shall be paid on all shipped orders paid by Customers in the Employee's designated territory. Bad debts, defined as non-payments by the Customer after a period of one hundred and twenty (120) days, shall be deducted from the Employee's commission for each order which remains unpaid to the extent of commission credited to the Employee for that particular order.

6. Expenses - The Company shall pay or reimburse the Employee for all necessary and reasonable expenses incurred or paid by the Employee, in connection with the performance of services under this Agreement, upon presentation of expense statements or vouchers or such other supporting information as it may from time to time request, evidencing the nature of such expense, and, if appropriate, the payment thereof by the Employee, and otherwise in accordance with Company procedures from time to time in effect.

7. Additional Benefits - The Employee shall be entitled to participate in any group insurance, qualified pension, hospitalization, medical health and accident, disability or similar plan or program of the Company now existing, or hereafter established, to the extent that he is eligible under the general provisions hereof. Notwithstanding anything herein to the contrary, however, the Company shall have the right to amend or terminate any such plans or programs without prior notice. In addition, the Company reserves the right to schedule vacations so as to not conflict with normal business operations.
8. Maintenance of Business Automobile - The Employee shall purchase and operate an automobile to be used in connection with his selling duties. The Company shall be notified of the make and model of said vehicle in order to approve same; in no event shall said vehicle be greater than five (5) years old. The Company shall pay the Employee a weekly allowance as additional consideration; however, the Employee shall be required to maintain said vehicle in a proper fashion, as well as be responsible for all applicable federal, state and local employment taxes incurred by the receipt of said payments.

By accepting said payment, the Employee covenants that he shall maintain a valid driver's license at all times and carry automobile liability insurance for no less than one million dollars (\$1,000,000.00). The Employee shall submit a certificate of insurance from his insurance carrier documenting said coverage upon the Company's request. The failure to comply with said request shall be grounds for immediate dismissal.

9. Representations and Warranties - The Employee will make no representations, warranties, or commitments binding the Company without the Company's prior consent.
10. Price and Product Changes - The Company will provide product specifications, prices, delivery schedules and discounts, and will give the Employee timely notice of any and all changes.
11. Acceptance of Orders - All orders are subject to acceptance or rejection by the Company at its home office. The Company shall also provide the Employee with the names of all persons and companies within his/her territory requesting information.
12. Duty of Loyalty - The Employee covenants and represents that he/she owes the Company the highest duty of loyalty with respect to his/her duties. This means that he/she will, among other things, maintain a constant vigil over the Company's property, never make secret profits at the Company's expense, never service customers of the Company but bill them him/herself, never accept kickbacks or special favors from Customer, dress in a proper fashion, not use drugs or alcohol while on the job, and maintain his/her personal or Company automobile in good condition together with a valid driver's license.

13. Protection of Confidential Information - In view of the fact that the Employee's work as an employee will bring him into close contact with many confidential affairs of the Company and its affiliates, including business matters such as information about costs, profits, vendors, inventory, service techniques, technical manuals, Customer needs and lists, markets, sales, discounts and other information not readily available to the public, and in consideration of one dollar (\$1.00) and the Company's employing or continuing to employ the Employee, the Employee hereby covenants and agrees, as an essential condition of his/her employment or continued employment by the Company as follows:

- a. To keep secret all confidential matters of the Company and its affiliates and not to disclose them to anyone outside of the Company, either during or after the Employee's employment with the Company, except with the Company's consent.
- b. To avoid discussing any matters of a confidential nature with competitors or their employees. This includes discussions regarding the Company's Customers, pricing, policies, etc. The Employee is reminded that any such discussions may cause the Company, and the Employee personally, to have violated antitrust laws including the Sherman and Clayton Acts. Sanctions of up to three (3) years imprisonment and fines up to \$100,000 have been imposed on individual employees who violate such laws.
- c. To deliver promptly to the Company upon termination of the Employee's employment, or at any time the Company may so request, all memoranda, notes, records, reports, technical manuals, and other documents (and all copies thereof) relating to the Company's and its affiliate's businesses which the Employee may then possess or have under the Employee's control.

14. Obligations After Termination - The Employee agrees that for a period of twelve (12) months after the termination of his/her employment with the Company, he/she shall not work for, own an interest in, operate, join, control, participate in, or be connected, either directly or indirectly, as an officer, employee, agent, independent contractor, share-holder or principal of any of the Principals, of the Company, whom you sold for during the past two (2) years while acting as our sales employee. The Employee further agrees to notify any prospective employer of the existence of this Agreement, in writing, with a copy of such notice to an officer of the Company.

If the Employee is unable to obtain employment consistent with his abilities and education solely because of the provisions of this paragraph, the Company shall have the option of waiving the requirements of this paragraph or making payments to the Employee equal to (Specify) of the weekly base pay at termination, provided The Employee has made and continues to make conscientious and aggressive efforts to find other employment. Documentation of these efforts will be required on a regular and consistent basis.

15. Right to Seek Injunctive Relief - The Employee agrees that any breach of any of the covenants contained in Paragraphs 9 and 10 of this Agreement constitutes substantial and irreparable harm to the Company, and that such harm could not be adequately compensated by the Company's recovery of monetary damage. Therefore, the Employee agrees that the Company may seek injunctive relief, or any other relief which it deems necessary and appropriate, in order to protect its rights under this Agreement and other common law rights, and that such injunctive proceeding shall not limit or in any way restrain the Company from seeking any other relief or damages.

16. Right to Seek Other Relief or Damages - Notwithstanding the right to seek injunctive relief, the Company may, upon a finding by it that the Employee has violated his covenant of duty of loyalty as more fully defined in paragraph 9 of this Agreement:

- a. Terminate the Employee without notice and without severance pay or other benefits;
- b. Deem the Employee to have forfeited all monies due under this pension plan and shall notify the Trustee not to disburse any monies under said plan;
- c. Recover all monies paid in salary, commission, and other benefits to the Employee for the period of time said duty of loyalty was violated;
- d. Withhold all severance payments until the Employee has complied with the directives of the Company upon termination.

17. Resignation of Employee - The Employee shall give the Company written notice of his decision to resign from said employment no less than two (2) weeks prior to the effective termination date.

Said notice shall be in writing, and sent Certified Mail or hand delivered to the (Headquarters) office of The Company.

18. Final Accounting - At the termination of the Agreement, the Company shall pay the Employee fifty percent (50%) of his/her final commission due, as calculated more fully on Exhibit A attached hereto. Said commission shall be earned on all accepted orders in house at the date of resignation which re shipped within one (1) month after the resignation date.

In the event the Company terminates the Employee with or without cause, the Company may, in its discretion, pay the aforesaid final commission due. In no event will the Employee receive commission if he/she is discharged for cause.

19. Non-Affiliate - Nothing in this Agreement shall be construed to constitute the Employee as a partner or affiliate of the Company.

20. Prior Agreement - This Agreement forms the entire understanding between the parties. It cancels and supersedes all prior agreements and understandings.

21.Modifications - There shall be no change, amendment, or modification of any of the terms in this Agreement unless it is reduced to writing and signed by both parties. The Employee shall not be excused from compliance with the provisions of this Agreement by the failure of the Company to protest any said changes instituted by either the Company or the Employee.

22.Enforceability - If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remainder of the Agreement shall remain in full force and effect and shall in no way be impaired.

Date this _____ day of _____ 20____

Sincerely yours,

Name of Rep Firm
(The Company)

By: _____
(Specify), Title

I, (Name of employee), the Employee, have read the above letter, understand, and agree with its terms, and have received a copy.

Name of Employee

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Exhibit A: Employee Commissions & Compensation

List all details and stipulations pertaining to Employee Commissions and Compensation here.