
GUIDELINES

FOR NEGOTIATING AN

AGREEMENT BETWEEN

SALES REPRESENTATIVES

AND THEIR SALESPEOPLE



ELECTRONICS REPRESENTATIVES ASSOCIATION

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The Guidelines for an Agreement between Sales Reps and their Salespeople does not cover all possible situations, but is intended only as a checklist of some of the matters that may be covered. These guidelines are not to be construed as a recommendation, as every relationship between a rep and his/her salespeople is special and cannot be covered by one standard agreement. Each agreement should be individually negotiated and prepared, and your attorney should be consulted concerning negotiation problems and formalizing the agreement. Please note that the restrictions contained in Section 10 may not be enforceable in every state.

Guidelines for an Agreement between Sales Reps and their Salespeople

THIS AGREEMENT, made this _____ day of _____, 20____, by and between _____, incorporated under the laws of the State of _____, (hereinafter called "Rep"), and _____, who lives at _____, in the city of _____ and State of _____ (hereinafter called "Salesperson"), as follows:

1. EMPLOYMENT, DUTIES AND AUTHORITY - Rep hereby employs Salesperson to sell and promote the sale of the products of such companies as may be Rep's principals from time to time, and Salesperson accepts the employment and agrees to sell and promote the sale of the products of such companies as may be Rep's principals from time to time. Salesperson also agrees to perform such other duties relating to Rep's business as may be assigned to Salesperson from time to time, to devote full time to his/her duties and to provide Rep with such reports on his/her activities as Rep may from time to time request. Salesperson is not authorized to contract on behalf of Rep or any of its principals, or to make any collection of funds.

2. TERRITORY AND CUSTOMERS - Salesperson shall sell and promote sales to and service customers and potential customers in the following territory:

(If Rep restricts Salesperson to calling or servicing specific customers, the customer should be indicated instead of the territory. Further, if specific customers are excluded from the territory, the provision should indicate the exclusions.)

3. COMPENSATION - Following is a typical provision covering salary and incentive compensation:

"While this Agreement is in force, Salesperson will be compensated on the following basis:

a) A regular salary of \$ _____ per month, to be paid in one (1) or two (2) installments each month, as the parties may from time to time agree, and

b) Incentive compensation equal to _____ % or 'net commission' received by Rep from its principals as a result of sales to customers assigned to Salesperson or in the territory assigned to Salesperson.

(If Salesperson is not to receive a salary and a commission, the appropriate subparagraph 'a' or 'b' should be omitted. The compensation provision can also be modified to provide for the Salesperson to receive the greater compensation provided in 'a' or 'b.' It is the practice of some Reps to pay Salespeople a "draw" against the commissions to be earned.)

c) "Net commission" shall mean commission that Rep actually receives from its principals, less any chargebacks made or allowances granted by Rep's principals or by Rep.

d) Incentive compensation (less withholding taxes, Social Security and other deductions authorized by Salesperson) will be paid to Salesperson on or before the _____ day of the calendar month following the month in which the commissions were paid to Rep, and Rep will submit to Salesperson explanatory statements at the time of payment of incentive compensation."

4. ACCEPTANCE OF ORDERS AND TERMS OF SALE - Salesperson will sell only at prices and upon terms of sale authorized by Rep and by its principals, and the right is reserved by Rep and its principals from time to time to change, alter, or amend prices and other terms and conditions of sale. All orders obtained by Salesperson are subject to acceptance or rejection by Rep's principals at their home offices and to the approval of their credit departments. Salesperson is not authorized to contract on behalf of Rep, or any of its principals, or to make any collection of funds.

5. EXPENSES - There are many different arrangements between Reps and their Salespeople. The following are typical provisions - the first provides for the reimbursement of expenses, and the second provides that the Salesperson shall be responsible for his/her own expenses:

a) "Rep shall reimburse Salesperson for reasonable expenses incurred by him/her in connection with Rep's business, provided that Salesperson submits to Rep within _____ days after the end of each calendar month such expense reports as may be required by Rep, together with such supporting documentation as may be acceptable to Rep."

b) "Salesperson shall pay all expenses of his/her activities whatsoever, including travel and entertainment, but will, upon request of Rep, submit a statement and substantiation of such expenses to Rep for review."

6. AUTOMOBILE - There are many different arrangements involving the use of an automobile by a Salesperson. A typical provision requiring the Salesperson to use his/her own automobile, is as follows:

"Salesperson will use his/her own automobile in performing his/her duties pursuant to this Agreement, carry liability insurance with limits

and coverage satisfactory to Rep, cause Rep to be named as an additional assured in such insurance policy, and deposit with Rep the original or duplicate original of such policy. The Rep will pay Salesperson an automobile allowance in the amount of \$ _____ for the use of Salesperson's automobile in the Rep's business."

In some instances, Rep will pay for collision and liability insurance on the Salesperson's automobile and/or other expenses for operating the vehicle.

In some instances, Rep will provide an automobile for the Salesperson to use, and if so, the provision covering the use of the automobile should clearly define who will be responsible for maintenance, repair, insurance, and any other expenses involved in the operation of the automobile, and should also provide that the automobile will be returned to the Rep upon request of the Rep."

7. EMPLOYEE BENEFITS - If Rep provides employee benefits for his Salespeople, the following is a typical provision covering some of the possible benefits:

"During the period this Agreement is in effect, Rep shall make available to Salesperson at Rep's expense:

- a) \$ _____ of group life insurance, with a provision for double indemnity in the event of accidental death;
- b) after Salesperson has been in Rep's employ for more than _____ days, the salary continuation plan of Electronic Representatives Association, Inc., as it may be in affect from time to time;
- c) such hospital and medical insurance as may be provided through Rep's group insurance plan in effect from time to time;
- d) _____ week(s) of vacation (with pay) after Salesperson has completed his/her first year of employment with Rep, and one (1) additional week for every _____ full year(s) (after the first year) Salesperson is in Rep's employ (up to a maximum of _____ weeks);
- e) Rep will supply Salesperson with reasonable quantities of catalogs, sales literature and samples from those furnished to Rep by principals.

8. TERM AND TERMINATION - There are many different arrangements for termination. The following is a typical provision:

"This agreement shall be effective as of _____ and shall continue thereafter until terminated in any of the following ways:

- a) By Rep, upon _____ days' written notice in the event of Salesperson's unreasonable or repeated failure to perform as agreed;
- b) by either party at any time by not less than _____ days' written notice to the other;
- c) by mutual agreement;
- d) upon Salesperson's death;
- e) by Rep, upon _____ days' written notice in the event Salesperson is disabled for a period in excess of _____ days at any one time, and, in the sole judgement of Rep, is unable to perform his/her duties pursuant to this agreement."

9. OBLIGATIONS UPON TERMINATION - The following is a typical provision:

"In the event of termination of this Agreement for any reason whatsoever other than the death of the Salesperson:

- a) Salesperson will, prior to the effective date of termination, furnish Rep with a list of every customer and prospective customer in his/her territory, and every project upon which he/she has been working, the list to include company name, name of project engineer, buyer and principal and product involved;
- b) Salesperson will actively work on closing all orders and report to Rep on all transactions and calls up to the effective date of termination;
- c) Salesperson will, prior to the effective date of termination, return to Rep all demonstration equipment, samples, literature, catalogs, correspondence, credit cards, and all other property belonging to Rep, in good condition and repair, ordinary wear and tear excepted;
- d) Rep will, on the effective date of termination, pay Salesperson all or the pro rata portion of Salesperson's monthly salary computed as of that date. Salesperson's incentive compensation shall be based on orders from customers in his/her territory dated on or before the effective date of termination, and Salesperson will not be entitled to incentive compensation on orders dated after the effective date of termination. Incentive compensation on orders dated on or before the effective date of termination shall be paid to Salesperson after the effective date of termination in accordance with paragraph 'd' of provision '3' hereof."

(Alternatively, incentive compensation could be paid on orders received or orders accepted by Rep's principals prior to the effective date of termination. Also, if both salary and incentive compensation are not involved, then the provision should be modified accordingly.)

The following could also be added as part of this provision

(d): "Anything herein to the contrary notwithstanding, Salesperson shall not be entitled to any compensation that may otherwise be due him/her under this Agreement if Salesperson is terminated by Rep for any of the following reasons:

- 1) embezzlement, theft or other dishonesty;
- 2) failure to comply with any of the provisions of Paragraph 10 hereof."

10. RESTRICTION ON COMPETITION - * The following is a typical provision:

"In view of the fact that Rep is going to make known to Salesperson his/her customer lists and prospects in Salesperson's territory, place Salesperson in contact with Rep's customers, and furnish Salesperson with other confidential information regarding Rep's business, Salesperson agrees that, in the event of termination of his/her employment for any reason whatsoever, he/she will not, for a period of one (1) year after the effective date of termination of employment, in the territory referred to in provision '2' hereof, either directly or indirectly:

- a) Act as a Sales Representative or employee for any principal whom Rep represented at the time of termination, or during the one (1) year period preceding the date of termination;
- b) solicit any of those customers or prospective customers upon whom Salesperson may have called during the one (1) year period preceding the effective date of termination of employment for the sales to them of products directly competitive with products Salesperson had been offering to them for Rep's principals as of the effective date of termination of employment, or within the one (1) year period preceding such date;
- c) solicit any employee to leave the employ of Rep.

Salesperson acknowledges that compliance with this provision is necessary to protect the goodwill and other proprietary interests of Rep and a breach thereof will result in irreparable and continuing damage to Rep for which there will be no adequate remedy at law. In the event of any breach of the covenants contained in this provision, Rep shall be entitled to injunctive and such other relief, including award of damages as may be proper.

Salesperson agrees that any confidential information disclosed or made available to Salesperson by the Rep or its customers, prospective customers or principals in the course of his/her employment shall at no time be disclosed to others - except in the performance of his/her duties for Rep - or availed of by him/her for his/her own benefit or the benefit of others without the prior written consent of Rep."

* The enforceability of restrictions on competition will vary depending on which state's laws apply to this Agreement. Therefore, you should consult an attorney regarding the enforceability of this section.

11. NOTICES - All notices shall be in writing and served in person or by registered or certified mail, addressed to either party at the party's principal place of business or residence, as the case may be. The postmark shall be deemed the date a notice is given.

12. ENTIRE UNDERSTANDING - This Agreement contains the entire understanding of the parties, and shall supersede any other oral or written agreements, and it shall inure to the benefit of Rep's successors and assigns. It may not be modified in any way without the written consent of both parties. Nothing herein shall be construed to constitute Salesperson as a partner or a joint venturer, or to authorize Salesperson to bind Rep or its principals in any respect.

13. CONSTRUCTION OF AGREEMENT - This Agreement shall be construed according to the internal laws of the State of _____.

14. DISPUTES AND ARBITRATION - The parties agree that any disputes or questions arising hereunder, including the construction or application of this Agreement, shall be settled by arbitration in accordance with the rules of the American Arbitration Association then in force. If the parties cannot agree upon an arbitrator within 10 days after demand by either of them, either or both parties may request the American Arbitration Association to name a panel of five (5) arbitrators. The Rep shall strike the names of two (2) on this list; the Salesperson shall then strike two (2) names, and the remaining name shall be the arbitrator. The decision of the arbitrator shall be final and binding upon the parties, both as to law and to fact, and shall not be appealable to any court in any jurisdiction. The expenses of the arbitrator shall be shared equally by the parties, unless the arbitrator determined that the expenses shall be otherwise assessed.

15. SEVERABILITY - The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

16. COUNTERPARTS - 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.

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

Salesperson:

By: _____

Title: _____

Representative:

By: _____

Title: _____