

NON-EXCLUSIVE SALES REPRESENTATIVE AGREEMENT

THIS AGREEMENT is entered into in, California, as of, 20__, between, a California corporation with principal offices at ("Manufacturer"), and _____ a _____ with principal offices at _____ ("Representative").

IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

(a) "Products" shall mean those products listed in Exhibit A attached hereto. Products may be changed, abandoned or added by Manufacturer, in its sole discretion, provided that Manufacturer gives thirty (30) days' prior written notice to Representative.

Manufacturer shall be under no obligation to continue the production of any Product, except as provided herein.

(b) "Territory" shall mean those geographical areas set forth in Exhibit B attached hereto.

2. APPOINTMENT AND AUTHORITY OF REPRESENTATIVE

(a) Non-exclusive Sales Representative. Subject to the terms and conditions herein, Manufacturer hereby appoints Representative as Manufacturer's non-exclusive sales representative for the Products in the Territory, and Representative hereby accepts such appointment. Representative's sole authority shall be to solicit orders for the Products in the Territory in accordance with the terms of this Agreement. Representative shall not have the authority to make any commitments whatsoever on behalf of Manufacturer.

(b) Reserved Rights. Manufacturer reserves the right to (i) solicit orders directly from and sell directly to any customer and all distributors within the Territory and (ii) appoint other sales representatives on a non-exclusive basis to sell the Products in the Territory. Manufacturer shall pay no compensation to Representative for orders solicited by Manufacturer directly or by other sales representatives.

(c) Territorial Limitation. Representative shall neither advertise the Products outside the Territory nor solicit orders from outside the Territory without the prior written consent of Manufacturer.

(d) Conflict of Interest. Representative shall pursue aggressive sales policies and procedures to realize the maximum sales potential for the Products in the Territory. Representative shall represent and promote the products of other companies only if it will not prejudice Manufacturer's business interests or create a conflict of interest in handling Manufacturer's confidential or proprietary information. Immediately prior to the execution of this Agreement, Representative shall provide Manufacturer with a list of the companies and products that it currently represents and shall notify Manufacturer in writing of any new companies and products at such time as its promotion of those new companies and products commences.

OR

(d) Conflict of Interest. Representative shall pursue aggressive sales policies and procedures to realize the maximum sales potential for the Products in the Territory. Representative warrants to Manufacturer that it does not currently represent or promote any lines or products that compete with the Products. During the term of this Agreement, Representative shall not represent, promote or otherwise try to sell within the Territory any lines or products that, in Manufacturer's judgment, compete with the Products covered by this Agreement.

(e) Independent Contractors. The relationship of Manufacturer and Representative established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give either party the power to direct and control the day-to-day activities of the other, (ii) constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint undertaking, or (iii) allow Representative to create or assume any obligation on behalf of Manufacturer for any purpose whatsoever. All financial and other obligations associated with Representative's business are the sole responsibility of Representative. Representative shall be solely responsible for, and shall indemnify and hold Manufacturer free and harmless from, any and all claims, damages or lawsuits (including Manufacturer's attorneys' fees) arising out of the acts of Representative, its employees or its agents.

3. COMMISSION

(a) Sole Compensation. Representative's sole compensation under the terms of this Agreement shall be a commission computed in accordance with the schedule set forth in Exhibit C attached hereto.

(b) Basis of Commission. The commission shall apply to all orders solicited by Representative from the Territory that have been accepted by Manufacturer and for which shipment has occurred. No commissions shall be paid on (i) orders solicited by other sales representatives within the Territory, (ii) orders solicited by Manufacturer within the Territory, or (iii) orders received from outside the Territory (even if Representative receives the initial inquiry from outside the Territory) unless otherwise agreed in writing by Manufacturer. Commissions shall be computed on the net amount billed by Manufacturer to the customer, and no commission shall be paid with respect to charges for handling, freight, sales taxes, C.O.D. charges, insurance, import duties, trade discounts, repairs, services, and the like. If invoices are rendered in currencies other than United States dollars, the commission shall be based upon the free market rate of exchange on the date that Manufacturer pays the commission to Representative.

(c) Split Commissions. If more than one sales representative is involved in the solicitation of a particular order, Manufacturer, in its sole discretion, may split the total commission for the order between or among the representatives involved. In no event shall the total commission for the order exceed the amount determined from Exhibit C attached hereto. Sales offices owned by Manufacturer shall be considered as sales representatives in determining split commissions.

(d) Payment. Payment of Commissions shall be in United States dollars and shall be subject to all applicable governmental regulations and rulings, including the withholding of any taxes required by law.

(e) Time of Payment. The commission on a given order shall be due and payable thirty (30) days after the end of the calendar month in which Manufacturer ships all Products on that order.

OR

(e) Time of Payment. The commission for a given order shall not be earned by Representative or paid by Manufacturer until payment on that order is received by Manufacturer. Commissions shall be earned and paid pro rata on partial payments received from customers on orders solicited by Representative. The commission on a given order shall be due and payable thirty (30) days after the end of the calendar month in which Manufacturer receives payment from the customer.

(f) Commission Charge-Back. Manufacturer shall have the absolute right to set such cash discounts, to make such allowances and adjustments, to accept such returns from its customers, and to write off as bad debts such overdue customer accounts as it deems advisable. In each such case, Manufacturer shall charge back to Representative's account any amounts previously paid or credited to it with respect to such cash discounts, allowances, adjustments, returns or bad debts.

(g) Monthly Statements. Manufacturer shall submit to Representative monthly statements of the commissions due and payable to Representative under the terms of this Agreement, with reference to the specific invoices on which the commissions are being paid.

(h) Inspection of Records. Representative shall have the right, at its own expense and not more than once in any twelve (12) month period, to authorize Manufacturer's independent auditors to inspect at reasonable times Manufacturer's relevant accounting records to verify the accuracy of commissions paid by Manufacturer under the terms of this Agreement.

4. SALE OF THE PRODUCTS

(a) Prices and Terms of Sale. Manufacturer shall provide Representative with copies of its current price lists, its delivery schedules, and its standard terms and conditions of sale, as established from time to time. Representative shall quote to customers only those authorized prices, delivery schedules, and terms and conditions. Manufacturer may alter at will the prices, delivery schedules, and terms and conditions, provided only that it gives prior written notice to Representative of any changes. Each order shall be governed by the prices, delivery schedules, and terms and conditions in effect at the time the order is accepted, and all quotations by Representative shall contain a statement to that effect. (b) Quotations. Representative shall promptly furnish to Manufacturer copies of all quotations submitted to customers.

Each quotation shall accurately reflect the terms of this Agreement.

(c) Orders. All orders for the Products shall be in writing, and the originals shall be submitted to Manufacturer. Manufacturer shall promptly furnish to Representative informational copies of all commissionable orders sent by customers in the Territory.

(d) Acceptance. All orders obtained by Representative shall be subject to acceptance by Manufacturer at its principal office currently located at the address listed for Manufacturer at the beginning of this Agreement,

and all quotations by Representative shall contain a statement to that effect. Representative shall have no authority to make any acceptance or delivery commitments to customers. Manufacturer specifically reserves the right to reject any order or any part thereof for any reason. Manufacturer shall send copies to Representative of any written acceptances on commissionable orders.

(e) Credit Approval. Manufacturer shall have the sole right of credit approval or credit refusal for customers in all cases.

(f) Invoices. Manufacturer shall render all invoices directly to the customers and shall send copies of all commissionable invoices to Representative. Payments shall be made directly to Manufacturer.

(g) Collection. It is expressly understood by Representative that full responsibility for all collection rests with Manufacturer.

(h) Inquiries from Outside the Territory. Representative shall promptly submit to Manufacturer, for Manufacturer's attention and handling, the originals of all inquiries received by Representative from customers outside the Territory.

5. PRODUCT WARRANTY AND PRODUCT AVAILABILITY

(a) Product Warranty. Any warranty for the Products shall run directly from Manufacturer to the customer, and pursuant to the warranty the customer shall return any allegedly defective Products to Manufacturer. Representative shall have no authority to accept any returned Products.

(b) Product Availability. Under no circumstances shall Manufacturer be responsible to Representative or any other party for its failure to fill accepted orders, or for its delay in filling accepted orders, when such failure or delay is due to any cause beyond Manufacturer's reasonable control.

6. DEMONSTRATION UNITS

Any sample or demonstration unit ("Demonstrator") of the Products provided by Manufacturer to Representative shall remain the property of Manufacturer. Representative shall have full responsibility for keeping each Demonstrator in proper operating condition during the entire time that the unit is in its possession. Within fifteen (15) days of a written request from Manufacturer, Representative shall return each Demonstrator in good condition to Manufacturer.

7. ADDITIONAL RESPONSIBILITIES OF REPRESENTATIVE

(a) **Forecasts.** Within the first five (5) days of every month, Representative shall provide Manufacturer with a ninety (90) day rolling forecast of orders showing each prospective sale by potential customer, Product model, intended close date, and probability.

(b) **Promotion of the Products.** Representative shall, at its own expense, vigorously promote the sale of and stimulate demand for the Products within the Territory by advertising and by direct solicitation. In no event shall Representative make any representation, guarantee or warranty concerning the Products except as expressly authorized by Manufacturer.

(c) **Customer Service.** Representative shall diligently assist its customers' personnel in using the Products and shall perform such additional customer services as good salesmanship requires and as Manufacturer may reasonably request.

(d) **Advising of Changes.** Representative shall promptly advise Manufacturer of (i) any changes in Representative's status, organization, personnel, and similar matters, (ii) any changes in the key personnel, organization, and status of any major customers of Manufacturer in the Territory, and (iii) any political, financial, legislative, industrial or other events in the Territory that could affect the mutual business interests of Representative and Manufacturer, whether harmful or beneficial.

(e) **Facilities.** Representative shall provide itself with, and be solely responsible for, (i) such facilities, employees, and business organization, and (ii) such permits, licenses, and other forms of clearance from governmental or regulatory agencies, if any, as it deems necessary for the conduct of its business operations in accordance with this Agreement.

(f) **Expense of Doing Business.** Representative shall bear the entire cost and expense of conducting its business in accordance with the terms of this Agreement.

(g) **Books and Records.** Representative shall maintain and make available to Manufacturer accurate books, records, and accounts relating to the business of Representative with respect to the Products. Representative shall also maintain a record of any customer complaints regarding either the Products or Manufacturer and immediately forward to Manufacturer the information regarding those complaints.

8. ADDITIONAL OBLIGATIONS OF MANUFACTURER

(a) Assistance in Promotion. Manufacturer shall, at its own expense, promptly provide Representative with marketing and technical information concerning the Products as well as reasonable quantities of brochures, instructional material, advertising literature, and other Product data.

(b) Assistance in Technical Problems. Manufacturer shall, at its own expense, assist Representative and its customers in all ways deemed reasonable by Manufacturer in the solution of any technical problems relating to the functioning and use of the Products.

(c) New Developments. Manufacturer shall inform Representative of new product developments.

9. TERM AND TERMINATION

(a) Term. This Agreement shall continue in force for a fixed term of one (1) year from the date hereof unless terminated earlier under the provisions of this Section 9. At the end of the fixed term, this Agreement shall terminate automatically without notice unless prior to that time the term of the Agreement is extended by mutual written consent of the parties.

(b) Termination for Convenience. This Agreement may be terminated by either party for any reason or for no reason, whether or not extended beyond the first year, by giving the other party written notice ninety (90) days in advance.

(c) Termination for Cause. If either party defaults in the performance of any provision of this Agreement, then the non-defaulting party may give written notice to the defaulting party that if the default is not cured within thirty (30) days the Agreement will be terminated. If the non-defaulting party gives such notice and the default is not cured during the thirty-day period, then the Agreement shall automatically terminate at the end of that period.

(d) Termination for Insolvency. This Agreement shall terminate, without notice, (i) upon the institution by or against Representative of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Representative's debts, (ii) upon Representative's making

an assignment for the benefit of creditors, or (iii) upon Representative's dissolution.

(e) Additional Commissions. In addition to any commissions already earned by Representative but not yet paid by Manufacturer under the terms of Section 3 above, Manufacturer shall pay commissions to Representative on all orders from the Territory (i) that were solicited by Representative, (ii) that were accepted by Manufacturer within thirty (30) days after the date of termination of this Agreement, and (iii) for which Manufacturer receives payment within (____) days after the date of termination of this Agreement ("Additional Commissions"). The payment of such Additional Commissions shall only be applicable, however, if Representative has complied in a timely manner with the provisions of Subsection 9(f) below. The schedule and basis for Additional Commissions shall be as set forth in Subsections 3(a) and 3(b) above. No Additional Commission shall be earned by Representative or paid by Manufacturer until payment for the order on which the Additional Commission is based is received by Manufacturer. Additional Commissions shall be earned pro rata on partial payments received on orders solicited by Representative. The Additional Commission on a given order shall be due and payable thirty (30) days after the end of the calendar month in which Manufacturer receives payment on the order from the customer. The charge-back provisions of Subsection 3(f) above shall apply to these Additional Commissions. (f) Return of Materials. All trademarks, trade names, patents, copyrights, designs, drawings, formulas or other data, photographs, Demonstrators, literature, and sales aids of every kind shall remain the property of Manufacturer. Within thirty (30) days after the termination of this Agreement, Representative shall prepare all such items in its possession for shipment, as Manufacturer may direct, at Manufacturer's expense. Representative shall not make or retain any copies of any confidential items or information that may have been entrusted to it. Effective upon the termination of this Agreement, Representative shall cease to use all trademarks, marks, and trade names of Manufacturer.

(g) Limitation on Liability. In the event of termination by either party in accordance with any of the provisions of this Agreement, neither party shall be liable to the other, because of such termination, for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, investments, leases or commitments in connection with the business or goodwill of Manufacturer or Representative. Manufacturer's sole liability

under the terms of this Agreement shall be for any unpaid commissions under Sections 3 and 9(e) above.

(h) Survival of Certain Terms. The provisions of Sections 3, 5(a), 9, 10, 11, 12, and 13 shall survive the termination of this Agreement for any reason. All other rights and obligations of the parties shall cease upon termination of this Agreement.

10. LIMITATION ON LIABILITY

MANUFACTURER'S LIABILITY ARISING OUT OF THIS AGREEMENT AND/OR SALE OF THE PRODUCTS SHALL BE LIMITED TO THE AMOUNT PAID BY THE CUSTOMER FOR THE PRODUCT. IN NO EVENT SHALL MANUFACTURER BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS. IN NO EVENT SHALL MANUFACTURER BE LIABLE TO REPRESENTATIVE OR ANY OTHER ENTITY FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

11. CONFIDENTIALITY

Representative acknowledges that by reason of its relationship to Manufacturer hereunder it will have access to certain information and materials concerning Manufacturer's business, plans, customers, technology, and products that are confidential and of substantial value to Manufacturer, which value would be impaired if such information were disclosed to third parties.

Representative agrees that it shall not use in any way for its own account or the account of any third party, nor disclose to any third party, any such confidential information revealed to it by Manufacturer. Representative shall take every reasonable precaution to protect the confidentiality of such information. Upon request by Representative, Manufacturer shall advise whether or not it considers any particular information or materials to be confidential.

Representative shall not publish any technical description of the Products beyond the description published by Manufacturer. In the event of termination of this Agreement, there shall be no use or disclosure by Representative of any confidential information of Manufacturer, and Representative shall not manufacture or have manufactured any devices,

components or assemblies utilizing Manufacturer's patents, inventions, copyrights, know-how or trade secrets.

12. TRADEMARKS AND TRADE NAMES

(a) Use. During the term of this Agreement, Representative shall have the right to indicate to the public that it is an authorized representative of Manufacturer's Products and to advertise (within the Territory) such Products under the trademarks, marks, and trade names that Manufacturer may adopt from time to time ("Manufacturer's Trademarks"). Nothing herein shall grant Representative any right, title or interest in Manufacturer's Trademarks. At no time during or after the term of this Agreement shall Representative challenge or assist others to challenge Manufacturer's Trademarks or the registration thereof or attempt to register any trademarks, marks or trade names confusingly similar to those of Manufacturer.

(b) Approval of Representations. All representations of Manufacturer's Trademarks that Representative intends to use shall first be submitted to Manufacturer for approval (which shall not be unreasonably withheld) of design, color, and other details or shall be exact copies of those used by Manufacturer. If any of Manufacturer's Trademarks are to be used in conjunction with another trademark on or in relation to the Products, Manufacturer's mark shall be presented equally legibly, equally prominently, and of greater size than the other but nevertheless separated from the other so that each appears to be a mark in its own right, distinct from the other mark.

13. GENERAL PROVISIONS

(a) Governing Law and Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of California. The federal and state courts within the State of California shall have exclusive jurisdiction to adjudicate any dispute arising out of this Agreement. Representative hereby expressly consents to (i) the personal jurisdiction of the federal and state courts within California and (ii) service of process being effected upon it by registered mail sent to the address set forth at the beginning of this Agreement.

(b) Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this

Agreement, shall be effective unless in writing signed by the party to be charged.

(c) Notices. Any notice required or permitted by this Agreement shall be deemed given if sent by registered mail, postage prepaid, addressed to the other party at the address shown at the beginning 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.

(d) Force Majeure. Nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts, orders or restrictions, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

(e) Non-Assignability and Binding Effect. A mutually agreed consideration for Manufacturer's entering into this Agreement is the reputation, business standing, and goodwill already honored and enjoyed by Representative under its present ownership, and, accordingly, Representative agrees that its rights and obligations under this Agreement may not be transferred or assigned directly or indirectly. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

(f) Legal Expenses. The prevailing party in any legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorneys' fees.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original. IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

[NAME OF MANUFACTURER] (Representative)

By _____

Title _____

EXHIBIT A
PRODUCT DESCRIPTION

[NAME OF MANUFACTURER] (Representative)

By _____

Title _____

EXHIBIT B
TERRITORY

[NAME OF MANUFACTURER] (Representative)

By _____

Title _____

EXHIBIT C
COMMISSION SCHEDULE

[NAME OF MANUFACTURER] (Representative)

By _____

Title _____