

Sales Representative Agreement

Date: _____

Dear _____:

This letter sets forth the terms and conditions of the agreement (the "Agreement") between _____ ("Company") and _____ ("Sales Representative"). Company is the owner of all rights in certain products (referred to as the "Products") and described more fully in Attachment A to this Agreement.

Appointment

Company agrees to have Sales Representative serve as

an exclusive

a nonexclusive

sales representative for the Products in the Territory to

retail accounts

wholesale accounts

trade (wholesale) sales of crafts work

commissioned Products, including: _____

licensing rights for the following markets: _____

Territory. Sales Representative will represent Company in the following territory: _____ (the "Territory").

[Optional]

The accounts and companies listed in Exhibit A are excluded from this Agreement, and Sales Representative shall not call on these accounts and shall not be entitled to income from such sources.

[Optional (use only if Agreement is exclusive)]

Company may advertise via Internet mail to accounts in the Territory. In that event, revenues from such sales shall be accounted for as follows: _____.

Company may attend trade shows or meet with accounts or collectors in the Territory. In the event that Company obtains a sales order or agreement in the Territory from such solicitations, revenues shall be accounted for as follows: _____.

Obligations of Sales Representative; Disclaimer

Sales Representative shall use best efforts to contact and solicit sales or other sources of revenue, as described

above, and present and communicate sales information between the parties. Nothing in this Agreement shall be interpreted by Company or Sales Representative as a promise or guarantee as to the outcome of any solicitation or negotiation by Sales Representative on behalf of Company or the Products. Any representations as to the likelihood of success regarding exploitation of the Products are expressions of opinion only. Sales Representative is free to conduct business other than on Company's behalf, including business or agency relationships with other Companies.

[Optional]

[] Sales Representative Reimbursement

Representative shall be reimbursed for the following expenses from any net revenue or net receipts as described in the "Payments" section, below (the "Work Income"). These reimbursements shall be deducted from Work Income before splitting the resulting revenues or receipts, provided that such expenses are solely for the purpose of promoting Company:

[] promotional mailings

[] paid advertising

[] shipping

[] insurance

[] travel

[] telephone

Company's written approval is required for any individual expense over \$_____.

In the event that any such costs are incurred for the benefit of other clients of Sales Representative as well as for Company, the expenses shall be prorated to reflect each client's actual expenses.

[] Company shall pay the following fees for showroom exhibit costs:

_____.

Obligations of Company

Company will provide Sales Representative with:

[] _____ samples of the Products, which samples shall remain the property of Company and shall be returned upon termination of this Agreement or upon thirty (30) days' notice from Company. Sales Representative shall have the limited right to display, copy and distribute the Products solely in conjunction with promoting the Products and fulfilling obligations as set forth under this Agreement.

[] printed materials as follows: _____

Company shall also perform the following duties: _____.

Payments

As compensation for the services provided above, Sales Representative shall receive the following compensation:

[Check and complete appropriate choices]

_____% of net receipts from all sales made by Sales Representative to retail accounts.

_____ % of net receipts from all sales made by Sales Representative to wholesale accounts.

_____% of net revenues from any licensing agreements for the Products.

_____% of net revenues from any commissions obtained by Sales Representative.

Company agrees that all income paid as a result of any sales or agreements solicited or negotiated by Sales Representative for the Products (the "Products Income") shall be paid directly to Company. Products Income shall include, but not be limited to, advances, guarantees or license fees.

Company shall issue payments to Sales Representative within ten (10) days of Company's receipt of any Products Income along with any client accountings as provided by the licensee.

The party responsible for all billings and collections shall be:

Sales Representative

Company

Each party shall keep accurate books of account and records covering all transactions relating to this Agreement, and either party or its duly authorized representative shall have the right upon five (5) days' prior written notice, and during normal business hours, to inspect and audit the other party's records relating to this Agreement.

Rights

Company represents and warrants that Company has the power and authority to enter into this Agreement and is the owner of all proprietary rights, whether they are copyright or otherwise in the Products.

Advertising

[Choose one]

Sales Representative can use Company's name, likeness, trademarks and trade names in Sales Representative's advertising and promotions.

Sales Representative can use Company's name, likeness, trademarks and trade names in Sales Representative's advertising and promotions, but must obtain Company's prior approval for every such use.

Assignment

This Agreement shall not be assignable by either party without the written authorization of the non assigning party.

Termination

This Agreement may be terminated at any time at the discretion of either Company or Sales Representative,

provided that written notice of such termination is furnished to the other party thirty (30) days prior to such termination.

[Optional]

[] If this Agreement is terminated by Company, and within ____ () months of termination Company enters into an agreement for assignments, sales or licenses with any client or company for whom Sales Representative had entered into agreements on Company's behalf during the term of this Agreement, Company agrees to pay Sales Representative the fees established in this Agreement. This obligation shall survive termination of this Agreement.

No Special Damages

Neither party shall be liable to the other for any incidental, consequential, punitive or special damages.

Entire Agreement

This is the entire agreement between the parties. It replaces and supersedes any and all oral agreements between the parties, as well as any prior writings. Modifications and amendments to this Agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

Successors and Assignees

This Agreement binds and benefits the heirs, successors and assignees of the parties.

Notices

Any notice or communication required or permitted to be given under this Agreement shall be sufficiently given when received by certified mail, or sent by facsimile transmission or overnight courier

Governing Law

This Agreement will be governed by the laws of the State of _____.

Waiver

If one party waives any term or provision of this Agreement at any time, that waiver will only be effective for the specific instance and specific purpose for which the waiver was given. If either party fails to exercise or delays exercising any of its rights or remedies under this Agreement, that party retains the right to enforce that term or provision at a later time.

Severability

If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement will be interpreted so as best to carry out the parties' intent.

Attachments and Exhibits

The parties agree and acknowledge that all attachments, exhibits and schedules referred to in this Agreement are

incorporated in this Agreement by reference.

No Agency

Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.

Attorney Fees and Expenses

The prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorney fees incurred in enforcing this Agreement.

Jurisdiction

The parties consent to the exclusive jurisdiction and venue of the federal and state courts located in _____ county, _____, in any action arising out of or relating to this Agreement. The parties waive any other venue to which either party might be entitled by domicile or otherwise.

Arbitration

Any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration in _____ in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The prevailing party shall have the right to collect from the other party its reasonable costs and attorney's fees incurred in enforcing this Agreement.

Signatures

Each party represents and warrants that on this date they are duly authorized to bind their respective principals by their signatures below.

Sales Representative:

(Signature)

(Typed or Printed Name)

Title: _____

Date: _____

Company:

(Signature)

(Typed or Printed Name)

Title: _____

Date: _____

Attachment A

Description of Products:

Excluded Accounts:

Explanation for Sales Representative Agreement

Here's how to use the provisions of the Sales Representative Agreement.

Introductory Paragraph

Insert the date, your name as Company and insert the name of the sales representative or the sales representative's company.

Appointment

This provision establishes whether your relationship with the sales representative is exclusive or nonexclusive, and establishes in what geographical areas the sales representative will represent your products. Exclusive means that while the agreement is in force, only the sales representative (not you or another sales representative) can represent the Products: 1) within the territory you define; and 2) for those sources of revenue set out in the agreement. If the relationship is nonexclusive, then others (including you) could solicit potential deals within the territory and for those purposes.

Choose the type(s) of representation you desire, for example, retail accounts, wholesale accounts, etc., by checking the appropriate box. If you choose licensing rights, specify the type of licensing—for example, licensing for posters, postcards, T-shirts, buttons, caps and whatever else you and the sales rep envision. You can be as broad or as narrow as you want in defining licensing rights, for example: “all forms of merchandise licensing” or “fabrics”. Also choose “commissioned Products” if your sales representative will represent you for purposes of getting you work on commission, for example from collectors.

Territory

Insert a statement in the territory section to reflect the regions in which you have granted rights, for example, “New York,” “New England” or “the world excluding North America.”

If you already have accounts in these territories you should exclude them from the agreement by checking the optional provision and listing the accounts on Attachment A.

Two other optional provisions are provided to deal with sales made by the Company, not the rep, within the Territory. You should only choose these optional provisions if your arrangement is exclusive. If your agreement is nonexclusive within the territory you don't need to account for sales that you make in the territory without the rep's help.

If you and the sales rep agree on one of these optional choices, you'll need to figure out a method of accounting for this non-rep income. Depending on your negotiating leverage, you and the rep might agree on:

- no payment to the rep
- full rep commission
- payment of a portion of the rep commission, or
- payment of the rep's commission for sales after the initial order.

Obligations of Sales Representative

This section establishes the sales representative's duties. The "disclaimer" language is inserted to protect the sales representative from future claims that the sales representative promised or guaranteed that your work could be sold or licensed. This provision also guarantees that the sales representative is free to take on other clients.

Sales Representative Reimbursement

If you choose this optional provision, check the boxes indicating which expenses you will pay. If you must pay an exhibit fee to use the rep's showroom, indicate that fee and when it should be paid, for example, "\$50 monthly". Insert an appropriate amount, for example "\$200," in the section indicating that your approval is required for expenses.

Obligations of Company

This section establishes the Company's duties as well as the Company's ownership of the artwork samples. In the event that printed materials are required, indicate what materials should be provided. If any additional duties are required of the Company, write this in the blank space.

Payments

Under this provision, the sales representative receives a percentage of all "Products Income." This income is paid directly to the Company who then reimburses the sales rep within a fixed time period, for example 30 days.

Rep commissions for sales range from 10-25%, although they are commonly in the 15-20% range. Commissions to licensing reps are typically between 20% and 33%.

The audit statement provides each party can audit the other's books. That way you can check to see what the rep has been doing with the accounts and vice versa. Normally, the Company is responsible for all billings and collections. However, if you and the rep have a different arrangement, check the appropriate box.

Rights

The rep will not want any surprises—for example a legal claim by someone that you don't own the work or that your work infringes on someone's copyright. For this reason, you should provide a guarantee that you own the artProducts and that you have the right to sell and license them. This won't completely prevent surprises, but it will help keep the sales rep free from liability if something unexpected does pop up.

Advertising

The rep may want to use your name, trademarks or your picture in promotional ads and at the rep's booth at trade shows. Check the second option if you and the rep have agreed to allow you prior approval for any such uses.

Assignment

This provision prevents you and the sales rep from transferring contract obligations to someone else. For example, if the rep sold her business to another rep and wanted to transfer your account

as part of the sale, your permission would be required.

Termination

What happens if you terminate the sales representative agreement but want to continue your business contact with a company with which you had previously made a deal through the sales rep? Under this provision, if you enter into a sales or licensing agreement with such a company within a fixed period of time after termination, you will have to pay the sales rep a fee (three to six months is common). You can also alter the sales representative's fee for post-termination deals. For example, you can agree that the sales representative will get only one-half of the fees if any agreement is entered into after three months but before six months. The sales representative may insist that you change the agreement so that the sales representative is paid if you enter into a contract with anyone that the sales representative solicited. In that case, in order to be sure that the sales representative has solicited the client or company, request that the sales representative furnish you a list of persons who were solicited (and the dates of solicitation and the name of the person contacted). This list can be furnished at the time of termination, or you can request that the sales representative notify you periodically (say, every six months) of all solicitations during that period.

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