



# Suggested Agreement: Independent Sub-Rep 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 letter will confirm the terms of our working relationship, to which you agree to be bound and work thereunder, effective (specify date), under the following terms and conditions:

1. The Company conducts a business as an authorized sales representative for various manufacturers of (Specify) and has established a valuable sales organization. The Company and yourself recognize and acknowledge that the main assets of our business (Each of which has been acquired through the outlay of considerable time, effort and expense) include our goodwill, names, addresses, continued patronage and particular needs and desires of our customers (Customers) and principals (Principals), and other private and confidential trade information.
2. The Company hereby retains you to render personal services and act as a sales agent to solicit orders for our Principals' products. You will serve as an independent contractor and be responsible to pay all applicable Social Security, withholding and employment taxes, as well as carry your own medical insurance and other benefits.
3. You will pay for all disbursements and expenses incurred in your sales endeavors, except those which the Company agrees to pay for, in writing, in connection with attending sales meetings at our (Specify) headquarters, provided we request the same.
4. You agree to (Specify: i.e., work full time) and diligently use your best efforts to secure sales for the Company and service existing customers. (*Optional:* However, you are permitted to handle other lines, provided they are noncompeting, and consent is obtained from the Company, which shall be notified in writing about the specific line you wish to represent, no less than ten (10) days before you begin representing same.)
5. You will make no representations, warranties or commitments binding the Company without prior consent, and you have no authority to sign any documents or incur indebtedness on the Company's behalf.
6. As additional consideration for your signing this Agreement containing the restrictive covenants herein, the Company will pay you a commission of (Specify) percent (X%) of the net commission actually received by us from orders written by you or received from your accounts.

7. (Draw – optional) Notwithstanding your commission arrangement enumerated in Paragraph 6 of this Agreement, we agree to pay you a draw of (Specify) per (Specify), which shall be deducted against any amounts due you as commissions.

We reserve the right to modify the amount of your draw, and we can terminate your draw arrangement at any time, with or without notice. In the event you resign or are terminated from your employment herein, and you have received a total draw which exceeds your earned commissions, you agree to promptly return the excess draw.

8. Your territory shall consist of the following: (Specify) Notwithstanding the foregoing, the Company reserves the right to alter, modify or change your territory at any time, with or without notice.
9. The Company contracts for your services at will and may terminate your Agreement, with or without cause at any time, upon thirty (30) days' written notice sent to you by regular mail. Likewise, you are free to resign as our sub-rep at any time upon sending written notice, by regular mail, to our (headquarters) office, thirty (30) days prior to the effective termination date.
10. Commission statements shall be presented to you on or about the fifteenth (15<sup>th</sup>) day of each month following our receipt of a commission statement and payment. All statements shall be deemed correct unless objections, in writing, are received by us within ten (10) days after our issuance of same. In the event a Principal reduces our commissions, due to returns, charge-backs, freight allowances, bad debts, et cetera, we reduce the commission due you on a prorated basis.
11. While acting as our sub-rep, you are not permitted to own an interest in, operate, join, control, participate in directly or indirectly, or be connected as an officer, employee, agent, independent contractor, partner, shareholder or principal of, or in, any corporation, partnership, firm, association, person or other entity soliciting orders for, selling, distributing or otherwise marketing products, goods, equipment and/or services which directly or indirectly compete with the business of the Company.
12. All lists and other records relating to the Customers and principals of the Company, whether prepared by you or given to you by us during the term of this Agreement, are the exclusive property of the Company and shall be returned immediately to us upon your resignation or the termination of your Agreement. The Company shall withhold all commissions due you until said records, and all copies thereto, are returned.
13. You further agree that, for a period of six (6) months following resignation or termination of employment, you 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, shareholder or principal of any of the Principals, of the Company, whom you sold for during the past two (2) years while acting as our sub-rep.

14. Notwithstanding the foregoing, you also agree that, for a period of six (6) months following resignation or termination of this Agreement, you shall not undertake, plan, or organize with other employees or sales associates of the Company, or former employees or sales associates of the Company, any business which competes, either directly or indirectly, with the business of the Company.
15. While acting as our sub-rep, and for a period of six (6) months thereafter, you also agree that you shall not induce or influence any person who is engaged by the Company as an employee, sales associate, or principal, to terminate his or her employment, or to engage or otherwise participate in, any business or activity which directly or indirectly competes with the Company.
16. Both you and the Company acknowledge that you are rendering personal service of a special and unique nature. Since a breach by you of any material terms in this Agreement may not be adequately compensated in damages in an action at law, the Company reserves the right to seek an injunction in a court of equity, or other competent Jurisdiction, in the event you violate any of the covenants mentioned in this Agreement. Furthermore, you agree to pay the Company all reasonable attorney's fees and court costs incurred by us, in bringing legal action to enforce any of the terms of this Agreement, if we prevail in any litigation.
17. At the termination of this Agreement, a final accounting shall be promptly made between us, and payment shall be made by either of us for any monies due. You shall receive commissions for all orders on the books which resulted from your sole efforts, notwithstanding that The Company is paid on these orders, after the termination of this Agreement, and you shall be paid your prorated share within ten (10) business days after these net commissions are received by us.
18. There shall be no change, amendment, or modification of this Agreement unless it is reduced to writing and signed by both parties. In addition, this Agreement cancels and supersedes all others.
19. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect and shall in no way be impaired.
20. Any litigation arising out of this Agreement, the subject matter hereto, or the parties shall be tried in (Specify location where your rep firm is located). (Or, *optional*) Any case or controversy arising out of this Agreement, the subject matter hereto, or the parties shall be settled by arbitration in (Specify where rep firm is located), under the then-prevailing rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and binding, and the losing party shall be responsible to pay for all reasonable attorney's fees and costs of the arbitration incurred by the prevailing party in addition to the award, as rendered by the arbitrator(s).

21. *(Optional)* The sales sub-rep shall maintain a general liability "umbrella " insurance policy in effect, at his own expense, during the term, of this Agreement. A copy of said policy shall be given to the Company immediately upon the Company's request.

Your signature in the lower left-hand corner of the copy hereof will indicate acceptance of the terms and conditions herein stated.

Sincerely yours,

Name of Rep Firm  
(The Company)

By: \_\_\_\_\_  
(Specify), Title

Accepted and consented to:

\_\_\_\_\_  
Name of sub-rep or company

\_\_\_\_\_  
Date