

**WARNING:** Professional advice should be obtained before using this specimen contract. The Association is not engaged in rendering legal advice, and advises you to consult with your attorney before entering into any agreements because of differences in state laws.

# **PTRA SPECIMEN ONLY**

## **SALES REPRESENTATION AGREEMENT**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**("Principal")**

**and**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**("Representative")**

1. **APPOINTMENT.** The Principal hereby appoints the Representative as its exclusive sales representative, for the territory described in Appendix A, to solicit orders for those products and services listed in Appendix B, together with any modifications and upgrades of the products and services in Appendix B. The Representative has the right of first refusal for any new products and services offered by the Principal. The Representative accepts this appointment and agrees to promote the sale of the Principal's products.
2. **ORDERS AND COLLECTIONS.** Orders for products obtained by the Representative shall be forwarded to the Principal and are subject to the Principal's acceptance. The Principal agrees to refer all inquiries relating to the territory to the Representative and to promptly furnish the Representative with copies of all correspondence and documentation between the Principal and Customers relating to matters in the territory. All invoices relating to orders obtained from the territory shall be submitted by the Principal directly to the Customer. The Representative shall assist in collecting past-due accounts. However, full responsibility for all collections and bad debts rests with the Principal.
3. **COMMISSIONS.**

- a. The Principal shall pay the Representative commissions at the rate specified in Appendix C attached hereto. When more than one Representative is involved with a particular order, the commissions specified in Appendix C shall be split among the following parties according to the percentage specified below:

\_% of the commission to the Representative in whose territory the order originated  
\_% of the commission to the Representative to whose territory the order is shipped  
\_% of the commission to the Representative who substantially facilitated the placement of the order, securing engineering and other specifications.

Commissions are payable on the net invoice price of all orders obtained from Customers in the territory, exclusive of sales taxes, insurance and freight charges.

- b) Commissions are earned by the Representative upon the Principal issuing an invoice to the customer and are payable no later than the 15th day of the month following the date of the invoice. The Principal shall provide the Representative with a monthly commission statement which shall include the Customer's name, address, invoice number, invoice amount, date of invoice, and the amount of the commission earned.
- c) In the event the Customer fails to pay the invoice, after the Principal has taken all reasonable and necessary steps to effectuate collection, the Principal shall advise the Representative, in writing, of its intent to charge back commissions on the unpaid balance of such invoice. The Principal may then deduct the amount of commissions paid on the unpaid invoice amount from the Representative's next commission check. When the invoice, or any part thereof, is paid to the Principal, the Principal shall pay the Representative its commission. However, in the event a commission paid has been charged back against the Representative, the Principal shall assign the debt to the Representative who may elect to collect the entire amount of the debt or any portion thereof and upon collection, retain the amount of commissions and all costs of collection, including attorney's fees, and remit to the Principal the balance of the amount collected, if any.
4. SALES POLICY. All prices and terms of sale shall be established by Principal, who has the right to change them upon thirty (30) days written notice to Representative.
5. USE OF SUB-REPRESENTATIVES. The Representative shall have the right to appoint Sub-representatives to sell the Principal's products in the territory. Sub-representatives may, however, only be appointed with the Principal's approval, in writing, which approval shall not be unreasonably withheld. In the event Sub-representatives are appointed, they shall be bound by all of the applicable terms and conditions of this Agreement.
6. GOVERNMENT REQUIREMENTS. Each party hereto shall comply with all statutes, ordinances, government regulations and governmental requirements in the conduct of its business. Failure to do so will be a material breach of this Agreement.
7. RELATIONSHIP OF PRINCIPAL AND REPRESENTATIVE.
- a) The Representative shall maintain a sales office within the territory and shall use its best efforts, and devote such time as may be reasonably necessary to sell and promote the sale of the Principal's products and services.
- b) The Representative shall conduct all of its business in its own name and in such manner as

it may see fit. The Representative shall pay all of the expenses of its office and activities, and shall be responsible for the acts and expenses of its employees.

- c) Nothing in this Agreement shall be construed to constitute the Representative as the partner, employee, or agent of the Principal; nor shall either party have any authority to bind the other in any respect, it being intended that each shall remain an independent contractor responsible only for its own actions.
- d) The Representative shall not, without the Principal's prior written approval, alter, enlarge or limit orders, accept the return of or make any allowance for products sold.
- e) The Representative shall furnish the Principal's Credit Department any information which it may have, from time-to-time, relative to the credit standing of any of its Customers.
- f) The Principal shall be solely responsible for the design, development, supply, production and performance of its products and the protection of its trade names and patents. The Principal agrees to indemnify, hold the Representative harmless against and to pay all losses, costs, damages or expenses, whatsoever including counsel fees, which the Representative may sustain or incur on account of infringement or alleged infringements of patents, trademarks or trade names resulting from the sale of the Principal's products, or arising on account of warranty claims or product liability claims. The Representative shall promptly deliver to the Principal any notices or papers served upon it in any proceeding covered by this Indemnification Agreement, and the Principal shall defend such litigation at its expense. The Representative shall, however, have the right to participate in the defense at its own expense unless there is a conflict of interest, in which case, the Principal shall indemnify the Representative for the expenses of such defense including counsel fees. The Principal shall provide the Representative with a certificate of insurance evidencing the Representative as an additional insured on the Principal's product liability insurance policy.
- g) The Principal shall furnish to the Representative, at no expense to the Representative, samples, catalogues, literature, and any other material necessary for the proper promotion and sale of the Principal's products in the territory. Any literature which is not used, samples, or other equipment belonging to the Principal shall be returned to the Principal at its request.
- h) Whenever the Representative, at the Principal's request, takes possession of the Principal's products for the purpose of delivering such products to Customers, or for any other purpose, the risk of loss or damage to or destruction of such products shall be borne by the Principal, and the Principal shall indemnify and hold the Representative harmless against any claims, debts, liabilities, or causes of action resulting from any such loss, damage, or destruction.
- i) The Principal shall provide the Representative and the Representative's employees with reasonable training and instruction in connection with the Principal's products.
- j) The Representative agrees that it shall attend, at the Principal's request, a reasonable number of trade shows necessary for the promotion of the Principal's products and shall perform necessary work at such trade shows. The Principal shall pay reasonable room costs and the Representative shall pay other costs and expenses incident to the attendance at such trade shows.

**(Some Representatives may wish to modify or delete this provision)**

- k) The Principal shall furnish to the Representative a copy of all correspondence with customers in the territory or relating to the Territory, including but not limited to, drawings, acknowledgments, letters, quotations, inquiries, invoices, and past due notices. In addition, the Principal shall advise the Representative in a timely fashion of all communications from Customers in the territory.
- l) The Principal shall promptly furnish to the Representative a copy of all sales leads from Customers or prospective customers located in or related to the Representative's territory. The Representative shall promptly follow up on such leads unless it has a valid reason for not doing so.

8. WARRANTIES AND REPRESENTATIONS.

- a) The Representative agrees to make no false or misleading representations with respect to the Principal or Principal's products. The Representative shall make no express or implied warranties to Customers or prospective customers or their representatives or to any other person on behalf of the Principal with respect to any of the Principal's products without the Principal's express written consent. The Representative agrees to hold the Principal harmless from all damages resulting from the Representative's breach of obligations of this Paragraph 8(a).
- b) The Principal shall repair or replace (within the limitations of such applicable express written warranty as may be issued by it) any products or parts thereof which prove to be defective in workmanship or material at the Principal's expense.
- c) If the Principal requests Representative to perform warranty work or repairs, the parties shall enter into a separate agreement relating to the Representative's performance and compensation for such work.

9. WAREHOUSING.

- a) In the event the Principal requests the Representative to warehouse the Principal's products, the Representative shall perform warehousing services at its own expense but will receive an additional commission of \_\_\_ percent on all sales within the territory, and a monthly fee of \$\_\_\_\_\_.  
**(The parties may wish to modify this provision to reflect other arrangements and agreements negotiated between the Principal and the Representative)**

- 10. PROCEDURE ON TERMINATION. In the event of termination or non-renewal of this Agreement, the Representative shall promptly return to the Principal all samples, literature, and product, if any, warehoused by the Representative, the cost of shipping to be borne by the Principal.
- 11. HIRING EMPLOYEES. The Representative and the Principal agree that during the term of this Agreement and any renewal thereof and for one year thereafter, neither will hire or engage or attempt to hire or engage an employee of the other or an independent representative under contact to the other without first obtaining prior written approval from the other.
- 12. TERM. This Agreement is effective from the last date written below and shall continue for three (3) years. Thereafter, it shall automatically renew, for successive three-year (3) periods, unless either

party notifies the other, in writing, of its intention not to renew at least ninety (90) days before the end of the initial term of this Agreement or any renewal term. Upon termination or non-renewal, the Representative is entitled to the commissions specified in Paragraph 3 on all orders placed prior to the effective date of termination or non-renewal, regardless of when the Principal accepts, invoices, or ships such orders. In the event that, prior to termination or non-renewal of this Agreement, the Representative has secured an order for a prototype or model, the Representative will be entitled to commissions on sales that result therefrom. No termination or non-renewal shall be effective unless the terminating or non-renewing party is current in its financial obligations to the other, anything in this Agreement to the contrary notwithstanding.

This Agreement may be terminated for the following reasons only:

- a) In the event that either party hereto shall commit an act of bankruptcy, file a voluntary petition for bankruptcy, be declared bankrupt in an involuntary proceeding, file for a plan of reorganization under any Bankruptcy Act, place its affairs in the hands of a receiver, enter into a composition for the benefit of creditors, or perform any other act based upon or due to its inadequate credit position, then the other party to this Agreement may terminate this Agreement immediately by written notice of termination to the other party.
  - b) Should either party be in material breach of its obligations and responsibilities under this Agreement, then the other party may terminate this Agreement by giving sixty (60) days advance written notice of termination to the other party setting forth the material breach upon which the termination is based. However, after receiving such notice the party receiving same shall have thirty (30) days to cure the alleged breach. If such breach is cured, this Agreement shall continue in full force and effect.
13. QUOTA. Principal may establish fair and reasonable annual quotas for Representative and shall advise Representative of the quota for the next year by the 15th of the last month of the prior year. If no notice is given, quotas will remain the same as for the prior year. Quotas shall be determined by considering, where applicable, Representative's prior year's sales, Representative's market share, the strength or weakness of the economy, the anticipated demand for the Products and the competitive situation. Representative's first year's quota is in Appendix D attached hereto and made part hereof.
  14. INTERPRETATION OF CONTRACT. This Agreement shall be interpreted pursuant to the laws of the state of Principal's place of business is located.
  15. If any provision of this Agreement is held contrary to law, the remaining provisions shall remain valid.
  16. ENTIRE AGREEMENT. This Agreement contains the parties' entire understanding, shall supersede any other oral or written agreements, and may not be modified except by a writing signed by both parties. This Agreement can not be modified orally or by any action or inaction on the part of either party.
  17. NOTICES. All notices between the parties shall be in writing and effective when sent by certified mail to the addresses above stated.

IN WITNESS WHEREOF, the Representative and the Principal have caused this Agreement to be signed on the date set forth below and to be effective on the last date specified below.

Principal:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Representative:

By:

\_\_\_\_\_

Title: \_\_\_\_\_

Date:

\_\_\_\_\_

**APPENDIX A**  
**REPRESENTATIVE'S TERRITORY**

**APPENDIX B**  
REPRESENTATIVE'S PRODUCTS

**APPENDIX C**  
REPRESENTATIVE'S COMMISSION SCHEDULE

**APPENDIX D**  
REPRESENTATIVE'S SALES QUOTA