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Independent Sales Representative Agreement

THIS AGREEMENT is made as of the day of execution, between _____ (the “Company”) and _____ (the “Representative”), and entered into for the purpose of retaining the Representative as the Company’s independent sales agent.

WHEREAS, the Company is a manufacturer, importer or distributor of _____ and other merchandise;

WHEREAS, the Representative is an established, independent sales representative in the _____ industry;

WHEREAS, the Company desires to retain the services of the Representative to work as its sales agent with the exclusive right to sell the Company’s products in the assigned territory.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, the parties agree as follows:

1. Appointment of Representative: The Company hereby appoints and the Representative does hereby accept appointment as the Company’s independent sales representative, with the exclusive right to sell the Company’s products to all customers in the Representative’s assigned territory, as outlined below.

2. Territory: The Representative shall have the exclusive right to sell the Company’s products to all customer accounts (including OEMs, retailers, re-sellers, VARs, distributors, jobbers, internet sales companies, buying groups, etc.) with their principal place of business or buying offices in that geographic region detailed in Schedule A, attached hereto. Representative shall also have the exclusive right to sell the Company’s products to such other customer accounts and customers, with their principal place of business or buying office outside the aforementioned territory, as the Representative may have the opportunity to open with the prior consent and approval of the Company.

3. Commissions: The following shall govern the payment of commissions to the Representative:

a. Commissionable Sales: In exchange for the Representative’s sales efforts, the Company shall pay the Representative a commission on all sales made to customer accounts (as described above) in the Representative’s territory, regardless of whether the

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customer's order is procured by the Representative, placed directly with the Company or procured by other means, regardless of whether the goods are ultimately shipped to locations inside or outside of said territory. Correspondingly, Representative shall not be entitled to any commission on sales to customers, who maintain their principal place of business outside the territory, even if those goods are shipped to locations within the territory, unless the Representative materially participates in selling the Company's goods to said customer or is required to service locations within the territory. In that event, the parties shall negotiate a reasonable commission rate or compensation for said work, before it is performed.

b. Commission Rate: The Company agrees to pay the Representative a commission at the rate(s) outlined on Schedule B, attached hereto, and these commissions shall be calculated on the net amount of all merchandise shipped to Representative's customers.

c. Payment of Earned Commissions: The Company agrees that the Representative is deemed to have earned a commission upon its acceptance of any customer order, and the Company shall pay all commissions to the Representative no later than the ___ day of the month following shipment on said order. Monthly commission payments shall be accompanied by a complete accounting of the disposition of all orders, shipped and pending, in the Representative's territory.

d. Accounting: In addition to the aforementioned commission statements, upon request, the Company shall provide the Representative such reasonable other information as may be necessary for the Representative to reconcile or audit Representative's commission account with the Company or as necessary to track pending business.

4. Chargebacks and Credits: No chargeback shall be made against any commission of the Representative (for bad accounts, markdown credits, advertising allowances or other reason) without the Representative's express prior approval. This provision shall not apply to goods returned by the customer because of defect. In the event the Representative consents to a chargeback against commissions, the Company shall render the Representative a complete accounting and proof of return or credit. All credit-approved sales shall be made at the Company's discretion, and the Company agrees to assume all responsibility for the collection of all such sales, and hold the Representative strictly harmless from any liability or contribution on such sales.

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5. Customers: It is understood that the customers in the territory are and have been originated by the Representative. At no time shall the Company be entitled to designate any customer as a house account, without the Representative's agreement.

6. Independent Contractor: It is understood that the Representative is an independent contractor, and nothing contained in this Agreement shall be construed as appointing the Representative as an employee of the Company. Correspondingly, it is understood that the Representative is solely responsible for the payment of all taxes on commissions paid by the Company under this Agreement. It is agreed that the Company shall do no withholding for income, self-employment, payroll or any other taxes. Moreover, nothing in this Agreement grants or authorizes either party to assume or to create any obligation, contract or liability, express or implied, on behalf or in the name of the other. Moreover, it is strictly understood that nothing contained herein shall serve to make the Representative an agent of the Company, and any such relationship is hereby expressly disclaimed.

7. Costs & Expenses: It is agreed that the Representative shall bear all costs and expenses attendant to Representative's efforts to sell the Company's products, without reimbursement from the Company, unless the parties shall otherwise mutually agree from time to time.

8. Subrepresentatives: Representative shall have the unfettered right to appoint subrepresentatives, agents and employees or other persons to assist in the carrying out of the duties under this agreement. Representative shall be solely responsible for hiring, supervision, compensation, termination and other matters relating to subrepresentatives or employees. It is strictly understood that subrepresentatives are not agents, representatives or employees of the Company, and the Representative shall hold the Company strictly harmless from any liability arising from the actions of said persons. It is also agreed that the Company shall not solicit or employ any subrepresentative, agent or employee of the Representative without the Representative's prior approval, and this bar shall continue for a period of two years following the end of any business relationship between Representative and any said subrepresentative, agent or employee or two years from the termination of this Agreement.

9. Noncompetition: It is agreed and understood that, during the term of this Agreement, the Representative shall not carry, sell or represent, in the assigned territory, any other product that is directly competitive with those of the Company without prior approval of the Company. Upon request, the Representative shall disclose to the Company the identity of every other manufacturer or importer or vendor whose products the Representative is currently selling. In the event that the Representative is selling the

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products of another principal, some individual items of which overlap with the Company's products, upon notice from the Company the Representative shall have sixty (60) days to elect whether to terminate this Agreement or to continue selling the Company's products, under this Agreement and resign the conflicting line. In the event the Representative elects to terminate this Agreement, the Company will pay the Representative commissions on pending business as provided in paragraph 10(c), below.

10. Termination: Except as provided in paragraph 9, above, it is agreed that the following provisions shall govern the termination of the parties' relationship:

a. Termination for Cause: Either party may terminate this Agreement for "good cause," which shall include any breach by either party of this Agreement or any failure by the Representative substantially to comply with the essential business requirements of the Company. In the event either party terminates this Agreement for cause, it is understood that the terminating party shall give the other ninety (90) days advance written notice of termination, detailing the good cause reasons for termination. The party receiving notice of termination shall thereafter have the first sixty (60) days of this period to cure said breach or alleged "good cause." In the event of the failure of the receiving party to cure said breach or alleged "good cause," the parties' relationship shall end at the expiration of the ninety (90) day notice period.

In the event termination is based upon: (1) either party's conviction of a crime related to their business; (2) bankruptcy or receivership of either party's business; or (3) either party's fraud, theft or other act of deceit upon the other, the notice provision of this paragraph are inapplicable, and termination may be effectuated immediately.

Nothing in this paragraph shall prejudice or serve as a waiver of any party's right to challenge or dispute the reasons for termination, and whether same constitute "good cause."

b. Termination Without Cause: Alternatively, this Agreement may be terminated by either party without cause. In the event either party terminates this Agreement without cause, it is understood that the terminating party shall give the other at least one hundred eighty (180) days advance written notice of termination.

c. Winding Up: Regardless of the reasons for termination, it is additionally understood that both parties shall deal with each other in good faith to wind up the parties' business affairs. Upon termination of this Agreement, it is understood that the Representative shall be deemed to have earned a commission on all orders written and programs placed with customers through the last day of the relationship, regardless of

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when goods related to said order or programs are actually shipped to the customer, and regardless of the length of any program placed. Commission on said orders and programs shall be become due and will be paid in accordance with the terms of paragraph 3, above and applicable law.

11. Products Liability: It is strictly understood that the Representative shall not be taking possession of inventory for sale to customers. All orders will be submitted by the Representative to the Company for direct shipment to customers. The Company hereby agrees to hold harmless, indemnify and defend the Representative for any liability the Representative may incur due to a product defect, product liability, negligence, failure to warn or breach of warranty claim. The Company's indemnification obligation hereunder shall include the duty to defend and/or reimburse the Representative for the cost of defending any such action.

12. Severable Terms: The terms of this Agreement are severable, as allowed by law. In the event any provision is deemed unenforceable or invalid, it shall be severed from the agreement, and the remaining terms shall remain in full force and effect.

13. Assignment & Successors: This Agreement shall be fully assignable, without the consent of the other. This Agreement shall be binding upon the parties, their successors and assigns, including any corporation into which the Company may be merged or acquired, as if that successor or assign was originally a party hereto.

14. Amendment & Modification: This Agreement shall be amended or modified only by the express, written consent by both parties, unless otherwise provided. Any attempted unilateral modification of any term of this Agreement shall be void.

15. Dispute Resolution: This Agreement shall be construed under the substantive laws of the state of the Representative's residence and where the sales and marketing services are to be rendered, without regard to the choice of law principles of any state. It is further agreed that any action initiated by any party, arising out of this agreement or any other facet of the parties' business relationship, shall be venued in the state or federal court in and for the state of Representative's residence.

IN WITNESS HEREOF, the parties have executed this Agreement as of the date stated:

Dated: _____.

THE COMPANY

By: _____

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Its: _____

Dated: _____.

THE REPRESENTATIVE

By: _____

Its: _____

Specimen

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Schedule A: Territory

The Representative's territory under this Agreement shall be comprised of the following geographic regions.

Schedule B: Commission Rates

The Company shall pay the Representative commissions at the following rates for sales made by the Representative under this Agreement.

Full Price Sales _____ %
First Cost Goods _____ %
Direct Import _____ %
Discount / Liquidation _____ %

