**SALES REPRESENTATION AGREEMENT CHECKLIST**

 I.GENERAL INFORMATION

 --Is there any background information or general setting that you want to put forth in a series of "whereas" clauses, such as

 --the identities of the parties;

 --the date the agreement was entered into;

 --the parties' addresses; and

 --the goals of the parties to be accomplished by the agreement?

 --Will the representation agreement cover all of the company's products or only a certain portion of them?

 II.EXCLUSIVITY

 --Is the relationship exclusive or nonexclusive?

 --Can the representative work for one of the client's competitors?

 --Must the representative obtain preapproval from the client?

 --Can such exclusivity be terminated?

 --At what time and for what reasons?

 --Can the representative prevent such termination?

 --Are there any exclusions?

 --Does the agreement expressly state that the representative is to be considered an "agent" of the client and can thereby bind the client to any advertising contracts it enters into?

 --Is the representative to be considered an independent contractor?

 --Is the representative to be allowed only a certain territory and, if so, is that territory carefully described?

 --Is the representative allowed to call on any and all customers, or are certain customers reserved to the company? Will the company want to approve a list of accounts before a representative actually calls on those accounts?

 III.REPRESENTATIVE'S RESPONSIBILITIES

 --What are the representative's responsibilities and/or rights?

 --solicit and obtain advertisers?

 --hire employees to handle the client's account?

 --ensure that advertisers are complying with the policies and procedures set forth in their agreements?

 --process orders?

 --supply the client with any requests for information in a timely manner?

 --receive current and timely information from the client?

 --What standard must the representative use in fulfilling its responsibilities? Best efforts?

 --Are there quotas that the representative must meet?

 --What happens if the representative fails to reach the required amount?

 --Must the representative follow certain guidelines provided by the client?

 --What restrictions are placed upon the representative?

 --What documentation must the representative furnish the client?

 --What information must be in the documentation?

 --How often must it be supplied?

 --What other documentation is required to be given to the client?

 --orders?

 --invoices?

 --remittances?

 --aged accounts receivables?

 --Will the representative's work be subject to periodic review?

 --Does the representative have to identify leads within the territory and send the home office a listing of those leads?

 --Does the company provide any technical support or assistance with installation or delivery of product?

 --Is there any training that should be described in the agreement? Is the representative required to undertake either initial training or perhaps updated training from time to time?

 --Is there any requirement that the representative maintain an office, telephone, etc.? If so, does that need to be spelled out in the representation agreement?

 IV.CREATION OF A SPECIAL DIVISION

 --Will there be a special division created by the representative to fulfill the terms of the agreement?

 --Will the representative hire employees of the client to staff the special division?

 --If so, must the client's employees sign the representative's standard employment agreement?

 --What compensation, benefits, etc., will these employees receive?

 --What warranties does the client have to make about its employees being hired by the representative?

 --Must the client indemnify the representative for any claims arising out of such employment?

 --Will the representative warrant that it will comply with all federal, state, and local employment laws?

 --How many of the representative's employees will be assigned to the special division?

 --Does the client have the right to reject any of the representative's employees?

 V.COMMISSIONS AND FEES

 --How is the representative's commission to be calculated?

 --Will the representative's commission be adjusted for any reason, such as

 --for orders that are placed but then canceled?

 --for goods that may be paid for but then returned at some later date?

 --for goods that are ordered, delivered, but never paid for?

 --Are there any fees included?

 --Is the commission due and payable

 --when the contract is signed?

 --when the goods are delivered?

 --when the goods are paid for?

 VI.CONFIDENTIAL INFORMATION

 --Is there a mutual confidentiality clause, or is the clause directed only toward one party?

 --What information must be kept confidential and for how long?

 --Under what circumstances can the confidential information be disclosed to a third party?

 --Are there provisions obligating the restricted party to get extra agreements with its employees or independent contractors?

 --At the termination of the agreement, how is any proprietary information in the possession of either party to be handled?

 --Must these items be returned or destroyed?

 --What proof must be given to show that information was, in fact, destroyed?

 --What about confidential information within the memory of each party's employees?

 --What is the standard of care that either party is obliged to exercise?

 --Are the terms of the agreement to be kept confidential?

 --What remedies does either party have for breach of the confidentiality clause?

 VII.TERM OF THE AGREEMENT

 --What is the term of the agreement?

 --If the term is annual or some other periodic renewal, how are the renewals done?

 --Are they automatic?

 --What notices need to be given; by whom; to whom?

 VIII.WARRANTIES/LIMITATIONS ON LIABILITY/INDEMNIFICATION

 --What warranties does the client make to the representative?

 --What warranties does the representative make to the client?

 --Are the limitations of liability in the agreement mutual?

 --For what causes of action will each party indemnify the other?

 --Is each party responsible for its own attorneys' fees?

 IX.INSURANCE

 --Does either party have to maintain insurance?

 --Are there dollar amount requirements?

 --Does the party required to obtain insurance have to give proof of such to the other party?

 X.TERMINATION/DEFAULT

 --For what reasons may either the client or representative terminate the agreement?

 --Does either party have the unilateral right to terminate the agreement?

 --What happens to any intellectual property of the client that is acquired by the representative?

 --return the property?

 --destroy the property?

 --How long does the representative have to comply?

 --What events of default will terminate the agreement?

 --nonpayment?

 --filing of bankruptcy?

 --breach of certain provisions?

 --discontinuance of business?

 --What happens if either party defaults?

 --Is either party entitled to notice and the opportunity to cure the default?

 --Are there any obligations that survive the termination of the agreement?

 XI.ASSIGNMENTS

 --Is either party permitted to assign the agreement and under what conditions?

 --Are there any restrictions?

 --Is permission from the other party required?

 XII.RESTRICTIONS ON HIRING

 --Does the agreement restrict each party from hiring any of the other party's employees?

 --Can either party obtain consent to hire the other party's employees?

 XIII.DISPUTE PROVISIONS

 --How are disputes to be handled?

 --through the courts?

 --through some type of alternative dispute resolution procedure?

 --Is there a choice of law provision?

 --Who pays for the parties' attorneys' fees?

 --Is there a time limitation within which each party needs to bring certain claims?

 XIV.MISCELLANEOUS PROVISIONS

 --Does the company impose any restrictions on dealing with the representative's handling of competitive products?

 --Will the representative be allowed to purchase some products in order to immediately satisfy the needs of certain good customers? (Some representatives like to have at least a small inventory of items, in some cases including replacement parts, so as to be able to satisfy a customer's unanticipated needs. Obviously this begins to blur the line between a representative and a distributor, so it should be included on the checklist.)

 --Will there be any restriction in competition after termination, and if so, can that restriction be justified and supported by law?

 --Is the representative to have possession of any of the manufacturer's sales training or other manuals, and if so, does the company need provisions to make sure those are always current and that they are returned upon termination?

 --How are expenses to be handled? Does the representative simply pay all of its own expenses or are there some expenses that the company will reimburse? If so, exactly what procedure should be used for that reimbursement?