



---

# NON-EXCLUSIVE SALES REPRESENTATIVE AGREEMENT & GUIDE

## **Included:**

Overview

Dos and Don'ts Checklist

Non-Exclusive Sales Representative Agreement Instructions

Sample Non-Exclusive Sales Representative Agreement

## 1. Overview

Sales representatives are an important part of any company's success. Your sales force serves as the public face of your company, and the individuals and organizations that present your products and services should be carefully selected. You must make sure your product will be marketed in a way that reflects your business and its brand. You must explain to your sales representatives what products they can sell and where they can sell them. With the enclosed agreement, you can be sure that your representatives will promote your products to the right people, in the right places, for the right price.

For a small company that's just starting out, independent sales representatives are often the best choice. Since they are often paid on a commission basis, there is no upfront investment of money and effort. They will be paid as the company is, and the two entities can build and grow together.

A good sales representative agreement outlines the rights and responsibilities of a company and the individuals and organizations that will advocate its products. Vague, verbal agreements can lead to disputes and ill will. It's best for all parties to detail their respective roles in writing before making that first cold call. Your product is the foundation of your business. With the enclosed agreement, you can entrust your product to the right representative.

## 2. Dos & Don'ts Checklist

- A sales representative is the public face of a company. The quality of a product will reflect on a sales representative's reputation. Both parties should think carefully about these roles and responsibilities before signing the enclosed document.
- Allow each party to spend some time reviewing the agreement. This will reduce the likelihood, or at least the efficacy, of a claim that a party did not understand any terms or how those might affect the agreement as a whole.
- Review your state's laws governing independent contractors. In recent years, many states have made it more difficult for individuals to qualify as such, imposing absolute requirements about the freedom the contractor must have from company control. Certain provisions in the enclosed agreement may need to be strengthened or adapted to fit your state's rules.
- The enclosed document is a non-exclusive sales representative agreement. This means that the company is entitled to hire additional representatives to sell the same products – perhaps even in the same geographical area. If you want to make sure that there will be only one sales representative for the company's products, you should not use this agreement.
- Before sitting down to sign, decide exactly what your goals are for the agreement. Will the protections guard your company's information? Is the commission percentage commensurate with the time and energy needed to sell the products? Take a moment to clarify the terms and conditions of your agreement before memorializing them in written form.

- Both parties should review the completed agreement carefully to ensure that **all relevant deal points** have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not stated expressly on the document.
- Sign two copies of the agreement, one for you and one for the other party.
- Keep your copy of the signed agreement for your records. At the end of its term, you and the other party can revisit its provisions and consider whether to renew.
- Depending on the nature of its terms, you may decide to have your agreement witnessed or notarized. This will limit later challenges to the validity of a party's signature.
- If your agreement is complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

### 3. Non-Exclusive Sales Representative Agreement Instructions

The following provision-by-provision instructions will help you understand the terms of your agreement.

The numbers below (e.g., Section 1, Section 2, etc.) correspond to the provisions in the agreement. Please review the document in its entirety before starting the step-by-step process.

- **Introduction.** Write in the date of the agreement, the name of each party, and an indication of each party's "type" (e.g., individual, corporation, partnership, LLC, etc.).
- **Recitals.** A report of each party's intent and ability to make the Representative a Company representative.
- **Section 1: Purpose and Appointment.** Appoints the Representative as a sales representative for the Company, and emphasizes that this is a "non-exclusive" appointment. This section also limits the Representative's duties to certain territories and products. As used in this agreement, "Products" can mean either products or services. If you like, you can change all references to "Products" to "Services." Attach a list of the particular products (or services) to be sold by the Representative as Exhibit A to the Agreement.
- **Section 2: Confidential Information.** Provides both a definition of confidential information and a reminder of the Representative's duty not to disclose that information.
- **Section 3: Nature of Relationship.** Explains that the Representative is not an employee or partner of the Company. This is an important distinction for many reasons, including those relating to insurance coverage, legal liability, and taxes. This agreement seeks to emphasize this divide, but both parties should take care not to blur the line between independent contractor and employee. Review your state's laws governing independent contractors to make sure that the enclosed agreement follows local restrictions.
- **Section 4: Territory.** Delimits the geographical area in which the Representative's sales efforts should be focused.

- **Section 5: Customers.** Describe the type of customer that the Representative should be seeking. This can be a select group of individuals or class of businesses. Attach a list of the Company's existing customers to the Agreement as Exhibit B.
- **Section 6: Sale Price of Products.** An explanation that the Company is responsible for setting the price and the terms of any Product sale by the Representative.
- **Section 7: Compensation.**
  - (a) Write in the commission percentage that will apply to each of the sales listed.
  - (b) Indicate the amount of time the Company has to forward commission payments to the Representative. For many businesses, this will be about 60 days. Depending on the Company's procedures for accounts receivable, you may want to allow for a longer or shorter time.
  - (c) Allows the Company to deduct offsets or charge-backs relating to past sales from future commissions.
  - (d) The circumstances under which no commission will be given.
  - (e) Emphasizes that the commission percentage is the Representative's only compensation.
  - (f) Notes that the Representative will pay for its own expenses. This is another reflection of the fact that the Company and the Representative are functioning as separate entities.
  - (g) Indicates that the Representative is responsible for paying its own taxes on the money it receives (i.e., it is not receiving a "salary" as an employee of the Company and the Company will not withhold those amounts).
- **Section 8: Representative's Services.** Lists the Representative's obligations under the agreement.
- **Section 9: No Conflict of Interest.** The Representative's promise that it is not currently representing any other company or product that competes with the Company. The Representative also indicates that it will provide a list of its current products/clients and amend that list as it changes.
- **Section 10: Company's Representations and Warranties.** Details the Company's promises under the agreement.
- **Section 11: Term.** You and the other party to your agreement can indicate how long the initial term will be. It may be a good idea to make the initial term one year, with continuing one-year renewals. This allows both parties enough time to test the relationship, without locking them in to a long-term deal.
- **Section 12: Termination.** Explains that certain actions or events will cause the agreement to end out of time, including written notice, material breach, or one party's entry into bankruptcy.
- **Section 13: Return of Property.** This is an extremely important provision, and although it may seem obvious to you that property should be returned after the end of the agreement, this paragraph makes that plain.
- **Section 14: Indemnification.** Protects each party from the financial consequences of the other's illegal or harmful conduct.

- **Section 15: Use of Trademarks.** States the Representative will not use the Company's trademarks inappropriately or acquire a trademark of its own that is similar to the Company's. For example, a sales representative for XYZ products can not apply for a trademark on Sam's XYZ Products. It also notes that the Representative may not continue to use the Company's trademarks after the agreement terminates.
- **Section 16: Assignment.** Explains that because the Representative is serving in a 'personal' capacity in its representation of the Company, the Representative cannot assign its interests and obligations under the agreement. However, if it obtains the prior written consent of the Representative, the Company is entitled to assign its rights and obligations.
- **Section 17: Successors and Assigns.** States that the parties' rights and obligations will be passed on to successor organizations (if any), or organizations to which rights and obligations have been permissibly assigned.
- **Section 18: No Implied Waiver.** Explains that even if one party ignores or allows the other to break an obligation under the agreement, it does not mean that party waives future rights to require the other party to fulfill those obligations.
- **Section 19: Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Company and the Representative.
- **Section 20: Governing Law.** Allows the parties to choose those laws that will be used to interpret the contract if there is ever a dispute. Note that this is not a venue provision: the included language will not impact where a potential claim can be brought. Write in the state's law that you would like to govern the agreement (usually the state where you reside or operate your business).
- **Section 21: Counterparts / Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain. It says that even if the parties sign the agreement in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same agreement. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the agreement as a whole.
- **Section 22: Severability.** Protects the terms of the agreement as a whole, even if one part is later invalidated.
- **Section 23: Entire Agreement.** The parties' agreement that the agreement they're signing is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 24: Headings.** Notes that the headings at the beginning of each section are meant to organize the document, and should not be considered operational parts of the note.

## DISCLAIMER

LegalZoom is not a law firm. The information contained in the packet is general legal information and should not be construed as legal advice to be applied to any specific factual situation. The use of the materials in this packet does not create or constitute an attorney-client relationship between the user of this form and LegalZoom, its employees or any other person associated with LegalZoom. Because the law differs in each legal jurisdiction and may be interpreted or applied differently depending on your location or situation, you should not rely upon the materials provided in this packet without first consulting an attorney with respect to your specific situation.

The materials in this packet are provided "As-Is," without warranty or condition of any kind whatsoever. LegalZoom does not warrant the materials' quality, accuracy, timeliness, completeness, merchantability or fitness for use or purpose. To the maximum extent provided by law, LegalZoom, its agents and officers shall not be liable for any damages whatsoever (including compensatory, special, direct, incidental, indirect, consequential, punitive or any other damages) arising out of the use or the inability to use the materials provided in this packet.

**NON-EXCLUSIVE SALES REPRESENTATIVE AGREEMENT**

This Non-Exclusive Sales Representative Agreement (the "Agreement") is made and effective as of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date") by and between \_\_\_\_\_, [an individual] [corporation] [etc.] (the "Representative") and \_\_\_\_\_, a \_\_\_\_\_ [corporation][limited liability company] [etc.] (the "Company"). The Representative and the Company may be referred to individually as a "Party" or collectively as the "Parties."

**RECITALS**

**WHEREAS**, the Company is engaged in the marketing and sale of the Products (as defined below and listed in Exhibit A to this Agreement); and

**WHEREAS**, the Company wishes to engage the Representative as an independent sales representative of the Products for the Company on the terms and conditions set forth below; and

**WHEREAS**, the Representative wishes to market and sell the Products in accordance with the terms of this Agreement; and

**WHEREAS**, each Party is duly authorized and capable of entering into this Agreement.

**NOW THEREFORE**, in consideration of the promises and benefits contained