

Appendix 4

Guideline Information for Preparation of Manufacturers' or Suppliers' Sales Agency Agreement*

1. The accompanying provisions are intended for use as guideline information in preparing agreements between sales agencies and their manufacturers or suppliers and are furnished solely as a courtesy to the members of the MANUFACTURERS' AGENTS NATIONAL ASSOCIATION and manufacturers, suppliers or sales agencies. To set forth the understandings of the parties, provisions should be compared, selected, rejected, changed, modified, amended and, where appropriate, additions and deletions should be made.
2. Reference material on most provision subject matter is available through MANA BULLETINS. Current articles of mutual concern to manufacturers, suppliers and their sales agencies are regularly published in *AGENCY SALES MAGAZINE*. They include analysis, data base statistics, alternatives, customs, trends, suggestions, admonitions, surveys, research, and pertinent developments in the SALES AGENCY FIELD.
3. Each provision requires attention. For example, MANA uses the words "AGENT" and "REPRESENTATIVE" as if they are synonymous. Another example, the EXCLUSIVE TERRITORY provision contemplates that manufacturer or supplier retains title, dominion and risk of loss with respect to the products. Because of the constantly changing interpretation of law (such as anti-trust restrictions and territorial rights), all provisions should be reviewed by legal counsel (in light of the status of federal, state and local law) at the time the parties enter their agreement.
4. The specimen provisions following are designed for an INDEPENDENT CONTRACTOR RELATIONSHIP. If the parties desire an employer-employee relationship, the agreement should be modified to so state. Irrespective of the provisions of the agreement, however, if the parties conduct themselves in an employer-employee relationship, the law will probably look to substance rather than form and impose on the parties rights and responsibilities of an employer-employee relationship.
5. In every case, before using a sample form of agreement, or specimen provisions, it is RECOMMENDED THAT LEGAL COUNSEL BE CONSULTED. There are established customs and practices applicable to certain types of industries, products and marketing programs. Federal, state and local laws constantly change. Both law and customs vary by state, territory, industry, products, etc.

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