

**CONSIGNMENT AGREEMENT: example of a form that may be used to document an agreement for a consignee to sell and distribute a manufacturer's merchandise**

*[Referring to Section Four of the agreement. This particular agreement anticipates that the consignee remits the gross sale proceeds to the principal, with an accounting, (paragraph B) and that the principal pays the consignee a commission, on the prior period sales (paragraph C). A more usual arrangement would be for the consignee to remit net proceeds, retaining the commission portion.]*

*The form is easily amended by eliminating paragraph C and adding after the words "sale of goods" in paragraph B the following language: ",net of commissions for such sales in accordance with the commission schedule set forth in Exhibit \_\_\_\_\_, which is attached to this agreement."*

**CONSIGNMENT AGREEMENT**

Agreement made, effective as of \_\_\_\_\_[date], by and between \_\_\_\_\_[name], of \_\_\_\_\_[address], City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, subsequently referred to as principal, and \_\_\_\_\_[name], of \_\_\_\_\_[street address], \_\_\_\_\_[city], \_\_\_\_\_[county], \_\_\_\_\_[state], subsequently referred to as consignee.

**RECITALS**

The parties recite and declare:

- A. Principal conducts a manufacturing business described as follows: \_\_\_\_\_.
- B. Principal desires to arrange for the sale and distribution of its merchandise throughout \_\_\_\_\_[territory].
- C. Consignee has agreed to undertake the marketing of principal's merchandise on the terms set forth in this agreement.

In consideration of the above recitals, the terms and covenants of this agreement, and other valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

**SECTION ONE**

**EXCLUSIVE APPOINTMENT**

Consignee shall have the exclusive right to sell and distribute principal's merchandise throughout \_\_\_\_\_[territory] during the term of this agreement.

**SECTION TWO**

## **DELIVERY OF MERCHANDISE**

- A. Principal shall deliver to consignee such quantity of its merchandise that consignee requires for sale from \_\_\_\_\_[his or her or its] place of business at \_\_\_\_\_[street address], \_\_\_\_\_[city], \_\_\_\_\_[county], \_\_\_\_\_[state].
- B. Principal shall pay all freight and shipping charges.
- C. Consignee shall be responsible for any loss of or damage to merchandise while it is under \_\_\_\_\_[his or her] control.

## **SECTION THREE**

### **SALE OF MERCHANDISE**

- A. Consignee shall devote \_\_\_\_\_[his or her] best efforts to the sale and distribution of principal's merchandise throughout the territory referred to above.
- B. All sales made by consignee shall be for cash. Credit sales may be made by consignee on written authority only, and on terms which principal may approve prior to such sales.
- C. All sales prices shall be fixed by principal.
- D. Consignee shall not sell principal's merchandise at less than the authorized prices, which prices will be reflected in price schedules that will be furnished to consignee from time to time.

## **SECTION FOUR**

### **MONTHLY STATEMENTS; COMPENSATION**

- A. Consignee shall furnish principal with monthly statements indicating all sales transactions during the preceding month and the extent of current inventory. Such statements shall be received by principal no later than the \_\_\_\_\_ day of each month.
- B. With the monthly statement, consignee shall remit to principal all monies received by \_\_\_\_\_[him or her] from the sale of goods, \_\_\_\_\_[if appropriate, add: together with signed receipts or bills of lading for credit sales].
- C. As soon as practicable after the \_\_\_\_\_ day of each month, principal shall render a written statement to consignee showing sales during the preceding month, and shall remit to consignee net commissions for such sales in accordance with the commission schedule set forth in Exhibit \_\_\_\_\_, which is attached to this agreement.

## **SECTION FIVE**

## **MANAGEMENT OF CONSIGNEE'S BUSINESS**

A. Consignee shall have entire charge of the management and operation of \_\_\_\_\_[his or her] business; \_\_\_\_\_[he or she] shall furnish all equipment and vehicles, and hire and pay the wages of all assistants and employees required for the operation of \_\_\_\_\_[his or her] business.

B. Principal reserves no supervision or control over consignee in the facilities, employees, and methods to be used and employed by consignee in carrying out the purposes of this agreement, and shall in no event be responsible for negligence of consignee or consignee's employees.

## **SECTION SIX**

### **TITLE TO MERCHANDISE**

Consigned merchandise shall remain the property of principal until sold in the regular course of business, except that consignee shall be responsible for all shortages of stock.

## **SECTION SEVEN**

### **EMPLOYEE BENEFIT PAYMENTS**

Consignee shall and does accept full and exclusive liability for the payment of any and all premiums, contributions, and taxes for workers' compensation insurance, unemployment insurance, and for pensions, annuities, and retirement benefits, now or later imposed by or pursuant to federal and state laws, which are measured by the wages, salaries, or other remuneration paid to persons employed by consignee in connection with the performance of this agreement. Consignee shall indemnify principal against any and all liability for any premiums, taxes, or contributions respecting consignee's employees that may be assessed against principal. Consignee shall enter into any agreement that has been or may later be prescribed by any federal or state governmental body or authority to effectuate the above-stated purposes.

## **SECTION EIGHT**

### **TERMINATION**

This agreement is not assignable and may be terminated by either party on \_\_\_\_\_ days' written notice to the other. \_\_\_\_\_ [If appropriate, add: On termination, principal shall have the right, for a period not to exceed \_\_\_\_\_ months following the date of termination, to: (1) use storage facilities located on consignee's premises at \_\_\_\_\_[address]; (2) replenish \_\_\_\_\_[his or her or its] stock of merchandise in such facilities; (3) sell and deliver \_\_\_\_\_[his or her or its] merchandise from such premises; and (4) remove all \_\_\_\_\_[his or her or its] merchandise from the facilities

during such period; provided, however, that principal shall pay a rental of \$\_\_\_\_\_ per month for the period such facilities are so used.]

## **SECTION NINE**

### **GOVERNING LAW**

It is agreed that this agreement shall be governed by, construed, and enforced in accordance with the laws of the State of \_\_\_\_\_.

## **SECTION TEN**

### **NO WAIVER**

The failure of either party to this agreement to insist on the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as waiving any terms and conditions, but such terms and conditions shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

## **SECTION ELEVEN**

### **ARBITRATION OF DISPUTES**

All disputes, claims, and questions regarding the rights and obligations of the parties under the terms of this agreement are subject to arbitration. Either party may make a demand for arbitration by filing such demand in writing with the other party within \_\_\_\_\_ days after the dispute first arises. Subsequently, arbitration shall be conducted by \_\_\_\_\_[set forth terms of arbitration, for example: three arbitrators acting under the rules of commercial arbitration of the American Arbitration Association].

## **SECTION TWELVE**

### **ATTORNEY FEES**

In the event that any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees.

## **SECTION THIRTEEN**

### **EFFECT OF PARTIAL INVALIDITY**

The invalidity of any part of this agreement will not and shall not be deemed to affect the validity of any other part. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full

force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

#### **SECTION FOURTEEN**

#### **ENTIRE AGREEMENT**

This agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding on either party except to the extent incorporated in this agreement.

#### **SECTION FIFTEEN**

#### **MODIFICATION OF AGREEMENT**

Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

#### **SECTION SIXTEEN**

#### **PARAGRAPH HEADINGS**

The titles to the paragraphs of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement.

#### **SECTION SEVENTEEN**

#### **COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

In witness of the above, each party to this agreement has caused it to be executed at \_\_\_\_\_[place of execution] on the date indicated below.

[Signatures and date(s) of signing]