

ELECTRO
FEDERATION
CANADA



Best Practices: Rep and Manufacturer Contracts



Best Practices document
developed by Electro-Federation Canada

REP AND MANUFACTURER CONTRACTS: AN EFC BEST PRACTICE

Establishing long-term, successful partnerships between manufacturers and sales representatives begins with a clear, balanced, and well-structured agreement. This best practices guide is designed to educate both parties on how to collaboratively develop a contract that not only reflects the specifics of their relationship but also provides a strong foundation for mutual success.

Each manufacturer-representative relationship is unique. As such, the process of developing an effective agreement involves two critical steps: first, negotiating the substantive terms of the partnership and second, translating those terms into appropriate legal language. It is highly recommended that both parties engage legal counsel, preferably with expertise in representative agreements, to ensure the final contract accurately reflects their intentions and can withstand potential legal scrutiny.

We advise all parties to evaluate the proposed agreement against the core elements recommended in the Electro-Federation Canada (EFC) guidelines. Any missing or insufficiently addressed clauses should be negotiated and incorporated. Understanding the rationale behind each clause is essential; being well-informed strengthens your negotiation position and helps foster a more equitable outcome. This document includes additional resources to support that understanding.

It is important to note that the sample agreement included here is not a standardized template. Given the diverse products and markets served by EFC members, a one-size-fits-all contract is neither practical nor

advisable. Key terms, such as the initial term of the agreement, termination conditions, and post-termination rights, must be negotiated in light of the specific business context and the party you are dealing with.

A special consideration applies when a manufacturer does not provide existing business in the territory. In such high-risk scenarios for the representative, the current best practice is for the manufacturer to share in the development risk by allowing the representative time and proper compensation for establishing business in a new territory. Conversely, where existing business does exist, full disclosure and cooperation in transferring that business is essential.

“Understanding the rationale behind each clause is essential”

Crafting a comprehensive and fair agreement at the outset is far more effective than attempting to renegotiate once operations are underway, particularly as revenues grow and stakes increase. This is especially critical for newer representative firms, who may be tempted to accept unfavorable terms without question. Proactive, informed negotiation not only protects long-term interests but also enhances the representative's credibility and standing with the manufacturer.

Guide to Contract Sections

1. Appointment as Sales Representative

What it means:

This section outlines the scope of the relationship with regards to products, geography and accounts.

Why it matters:

It identifies the scope of the Sales Reps exclusive rights to pursue sales in that area and ensures they get credit and commission for any business they generate. It also helps avoid conflicts in account or territory coverage and compensation.

2. Orders

What it means:

It outlines the process and agreed terms on the acceptance/rejection of orders by the manufacturer along with the documentation to support processed orders and customer communications.

Why it matters:

Manufacturers ultimately decide on the acceptance and rejection of orders and it's important for the sales organization to understand that orders are not officially accepted until they are accepted by the manufacturer. It also provides assurance on the document requirements to confirm the terms of orders between the manufacturer and the customer.

3. Warranties

What it means:

Sales Reps can only communicate warranties that are already published by the Manufacturer.

Why it matters:

This avoids legal problems caused by Sales Reps making unauthorized promises to customers.

4. Salesperson's Duties

What it means:

This section outlines the expected roles and responsibilities of the Sales Rep including the scope of costs incurred to represent the products on the manufacturer's behalf. This section would also outline value added services required by the Sales Rep including warehousing and design services.

Why it matters:

It defines the Rep's responsibilities clearly and outlines the services under the compensation agreement while ensuring they operate independently and protect both parties from liability.

5. Manufacturer's Duties

What it means:

This section outlines the expected roles and responsibilities and tools required of the manufacturer to support the Rep's sales efforts in the field. It includes items like pricing, warranty, technical information, literature and samples, terms of sale, customer information etc.

Why it matters:

This ensures the Sales Rep has what they need to succeed and protects them from losses related to product damage or legal issues.

6. Commissions

What it means:

Outlines how and when the Sales Rep will be paid for orders they help bring in. Includes commission rates, timing, adjustments, and how to handle multi-territory deals.

Why it matters:

Ensures the Rep is fairly paid for their efforts and protects both parties by clearly explaining deductions, payment terms, and what happens in case of returns or uncollectible sales.

7. Relationship of Parties

What it means:

The Sales Rep is an independent contractor, not an employee.

Why it matters:

Clarifies that the Rep isn't entitled to employee benefits and the Manufacturer isn't responsible for the Rep's team or liabilities.

8. Term and Termination

What it means:

Explains how long the agreement lasts, how it renews, and how either party can end it—especially in case of a breach. There is also an appendix which provides guidelines on term and termination.

Why it matters:

Provides flexibility and clarity if things go wrong or if either party wants to end the relationship.

9. Commission Payments upon Termination

What it means:

Details how commissions are handled after the agreement ends. If the agreement ends without a serious breach, the Rep still gets paid for pending deals.

Why it matters:

Protects the Rep from losing earned commissions and motivates both sides to end the agreement responsibly.

10. Indemnification

What it means:

Each party agrees to protect the other from legal claims due to their own mistakes or misconduct.

Why it matters:

Ensures one party isn't unfairly held responsible for the other's actions—especially concerning product issues, injuries, or intellectual property.

11. Waiver

What it means:

If either side overlooks a problem once, it doesn't mean they're giving up their rights forever.

Why it matters:

Preserves each party's right to enforce the contract even if they didn't act on a breach right away.

12. Assignment

What it means:

Neither party can transfer their responsibilities to someone else without permission.

Why it matters:

Protects both parties from unexpected changes to the business relationship.

13. Severability

What it means:

If one part of the agreement is found to be invalid, the rest still applies.

Why it matters:

Ensures the whole agreement doesn't fall apart because of one problematic clause.

14. Non-Solicit

What it means:

The Manufacturer agrees not to hire or poach the Sales Rep's team for one year after the agreement ends.

Why it matters:

Protects the Sales Rep from losing valuable team members due to insider recruitment.

15. Governing Law

What it means:

Identifies the jurisdiction where the agreement is governed.

Why it matters:

Clarifies which jurisdiction's rules apply if there's ever a legal dispute.

16. Entire Contract

What it means:

This document contains everything the parties agreed on—no side deals count unless added in writing.

Why it matters:

Prevents misunderstandings or attempts to enforce informal conversations.



Sample Contract



SALES REPRESENTATION AGREEMENT

TO BE NOTED. THIS IS A SAMPLE TEMPLATE AGREEMENT AND EACH SITUATION IS UNIQUE. IT IS STRONGLY RECOMMENDED THAT UPON EVERY NEGOTIATION OR USE OF AN AGREEMENT YOU SEEK THE ADVICE OF LEGAL COUNSEL TO WORK WITH YOU TO REVIEW AND ADVISE OF THE RISKS AND LIABILITIES YOU ARE RESPONSIBLE FOR. THIS IS PROVIDED AS A SAMPLE, AND MAY NOT COVER ALL POSSIBLE SITUATIONS. EACH RELATIONSHIP AND THE PARTIES NEEDS ARE DIFFERENT IN EVERY SITUATION AND CANNOT BE GOVERNED BY A STANDARD AGREEMENT. MANY SECTIONS WILL CHANGE GIVEN A DIFFERENT SITUATION (COMMISSIONS, TERM, TERMINATION ETC.).

This agreement made as of (Month) (Day), (Year).

BETWEEN:

Name of Corporation/Manufacturer,
a (Jurisdiction of Business) company
("Manufacturer")
- and -
Name of sales representative,
an individual ("Salesperson")

RECITALS:

1. Manufacturer is engaged in the business of manufacturing/distributing _____
(Type of products) and wishes to have its products offered for sale in various regions of
Canada;

[NTD: The above location is to be amended to better specify the area the Salesperson is involved in.]

2. Salesperson is engaged in the business of representing manufacturers/distributors as sales agent and is compensated for such service through commissions on sales arranged for the manufacturer/distributor; and

3. Manufacturer desires to engage Salesperson and Salesperson desires to accept engagement by Manufacturer as Manufacturer's sales representative under the terms and conditions of this Agreement.

TERMS OF AGREEMENT:

1. Appointment as Sales Representative

The Manufacturer hereby appoints the Salesperson as its exclusive independent sales representative to solicit and promote the sales of the products described on Exhibit A attached hereto (the "Products") to customers and prospective customers in the territory described on Exhibit B attached hereto (the "Territory"). Except for sales of Products to those customers listed on Exhibit C attached hereto (the "House Accounts"), the Salesperson shall at all times have the right to solicit and promote the sale of the Products to customers and prospective customers in the Territory, and at no time during the term of this Agreement shall the Manufacturer take any customer "in house" or otherwise limit the Salesperson's right to solicit and promote the sale of the Products in the Territory or limit the Salesperson's right to receive Commissions (as hereinafter defined) on account of sales of Products to customers in the Territory.

2. Orders

Orders for the Products received by Salesperson shall be immediately forwarded to Manufacturer. Each order solicited by Salesperson is subject to acceptance by Manufacturer, and Manufacturer may reject any order, in whole or in part for any reason, including without limitation, lack of availability of inventory or supplies or limited capacity of Manufacturer, or credit worthiness of the customer submitting the order by Salesperson accompanied by the required information, and after acceptance by Manufacturer, Manufacturer shall issue to the customer its Sales Order with the terms and conditions that will govern the sale of the Products sold. If Manufacturer notifies customer of its acceptance or rejection of an Order, a copy of any written notification shall be transmitted to the Salesperson. Manufacturer shall provide Salesperson with copies of all Orders received by customers within the Territory, which shall include shipping notices, correspondence and quotations made to same customers.

3. Warranties

Salesperson shall not make any representations as to warranties to any customer or potential customer other than the warranty published by Manufacturer in its sales literature or Sales Order from time to time.

4. Salesperson's Duties

Salesperson agrees to: use its best efforts to sell and promote the sale of the Products within the Territory and to develop a volume of business of Products in the Territory; contact and solicit prospective purchasers of the Products in the Territory, make demonstrations to promote sales and promptly respond to inquiries for the purchase of the Products; devote such time as may be necessary for the purpose of soliciting or promoting the sale of the Products; not to Not make any representations, warranties, or commitments regarding the performance of the Products, except as authorized by the Manufacturer; Pay all the costs of conducting its business, including, but not limited to, commission or other compensation to salespersons employed by the Salesperson; and maintain all appropriate and necessary insurance coverages required to operate their business under this Agreement.

5. Manufacturer's Duties

Manufacturer agrees to:

- a) establish the price, charges, warranty terms, technical information and conditions of sale of the Products;
- b) furnish Salesperson with current price lists, terms, quantity discounts and freight charges and credit applications for customers;
- c) assume the risk of loss or damage to or destruction of Products which the Manufacturer has furnished to the Salesperson for delivery to customers or for any other purpose, and the Manufacturer shall indemnify and hold harmless the Salesperson against any claims, debts, liabilities or causes of action resulting from any such loss, damage, or destruction;
- d) provide its customary literature and samples concerning the Products to Salesperson or to customers as Salesperson may from time to time request;
- e) Refer to the Salesperson all inquiries from customers and prospective customers located within the Territory, and promptly furnish the Salesperson with copies of all correspondence and documentation between the Manufacturer or any of its affiliates and such customers and prospective customers; and
- f) pursue to the extent reasonable collections from customer for all orders delivered as a result of sales made by Salesperson.

6. Commissions

[NTD: Each and every sales situation is unique and dependent on manufacturer, range of products, types of sales, splitting commissions based on reps in different territories etc. This is a basic clause and it is highly recommended to consult legal counsel regarding this clause and any changes or amendments to same.]

- i. Manufacturer shall pay to Salesperson a commission on the sale of the Products solicited by Salesperson in the Territory, in accordance with the Commission rates set forth in Schedule D attached hereto, of the “net sales price”. The “net sales price” shall mean the list price of the Product sold less only separately stated costs for any trade discounts or allowances, freight, duties, taxes, and insurance.
 - a. The Manufacturer shall pay the Salesperson a split of commissions when engineering, execution of the order, or a shipment involves different territories (i.e., 50% to the representative in whose territory the product is engineered or specifications are prepared: 25% to the representative into whose territory the product is shipped; and 25% to representative in whose territory the order is executed).
- ii. Salesperson’s commission shall be earned when Manufacturer accepts an order from the customer for the Products sold. The commission shall be paid no later than the tenth of the month following acceptance by Manufacturer based on amounts actually received by the Manufacturer during the immediately preceding month. Interest will begin to accrue on unpaid commissions beginning with the thirtieth day following invoice, at the rate of [percentage]%per month. Interest will continue on the average daily unpaid balance until all commissions and accrued interest are paid and current. If over billing results from mistakes in quantities or sales price or if a customer returns any Product, a proportionate amount of the commission previously earned by and paid to Salesperson with respect to the sale of such Product shall be deducted from future commissions to be earned by Salesperson.
- iii. If the account becomes uncollectible, after exhausting all reasonable efforts to collect, then a proportionate amount of the commission previously earned by and paid to Salesperson with respect to the sale of such Product shall be deducted from future commissions to be earned by Salesperson.
- iv. The Manufacturer may deduct from a payment of commissions the amount of any commissions paid by the Manufacturer to the Salesperson (i) for Products which have been returned to the Manufacturer by a customer in the Territory, and (ii) for any credit given to a customer in the Territory with respect to any Products. The Manufacturer shall provide to the Salesperson, not later than the tenth day of each month, an accounting of all amounts received by the Manufacturer for which the Salesperson is due a commission hereunder.
- v. The commission statement shall include the total of all commissions earned prior to the current period, a “Point of Sale” report with respect to all distribution sales of Products to the customers in the Territory, a “Point of Transfer” report with respect to all transfers of Products by a distributor from such distributor’s central warehouse to such distributor’s local warehouse, commissions paid during that period (listing the invoices on which commissions are being paid), and the total of all commissions due and owing to Salesperson less amounts equal to commissions previously paid or credited on sale of Manufacturer’s Products which have been returned by the customer, or allowances credited to the customer for any reason by the Manufacturer and an amount equivalent to Commissions previously paid or credited on sales which Manufacturer shall not have been fully paid by the customer, whether by reason of the

customer's bankruptcy, insolvency, or any other reason which, in Manufacturer's judgement, renders the account uncollectible (if any sums are ever realized upon such uncollectible accounts, Manufacturer will pay Representative its percentage of Commission applicable at the time of the original sale upon the net proceeds of such collection).

7. Relationship of Parties

Salesperson's relationship to Manufacturer in the performance of this Agreement is that of an independent contractor. The personnel performing services shall at all times be under Salesperson's exclusive control and direction and shall be employees of Salesperson and not employees of Manufacturer. Salesperson shall not have the authority to bind Manufacturer in any manner.

8. Term and Termination

[NTD: This is a section where number of days for written notice, length of agreement can be negotiated.]

This Agreement shall commence on the date hereof and shall continue until the _____ (____) anniversary of the date hereof, and thereafter shall automatically renew for successive one (1) year periods unless either party gives written notice to the other of its intent not to renew this Agreement not later than _____ (____) days prior to the end of initial term or any renewal term. Notwithstanding the foregoing, this Agreement may be terminated by either party by mutual agreement, or upon a material breach of this Agreement by the other party; provided that the party claiming such breach shall give the other party written notice thereof setting forth the alleged breach in reasonable detail, and the other party shall have _____ (____) days from the date of its receipt of such notice to cure any alleged breach.

9. Commission Payments upon Termination

Unless this Agreement is terminated by the Manufacturer as a result of Salesperson's material breach hereof, which breach is not timely cured, then notwithstanding such termination, Salesperson shall be entitled to receive Commissions in accordance with this Agreement for all orders for Products received by the Manufacturer from customers in the Territory during the remaining portion of the then current term of this Agreement and for a period of _____ (____) months following the end of such remaining term of this Agreement, notwithstanding the date such orders are accepted or the Products are shipped. Upon the termination of this Agreement as a result of Salesperson's material breach hereof, which breach is not timely cured, then Salesperson shall be entitled to receive Commissions on all orders for Products received by the Manufacturer from customers in the Territory dated on or prior to the effective date of such termination, notwithstanding the date such orders are accepted, or the Products are shipped.

10. Indemnification

- a) The Manufacturer is solely responsible for the design, development, supply, production and performance of the Products and the protection of its patents, trademarks and trade names, and other intellectual property. The Manufacturer shall indemnify, defend, and hold Salesperson harmless from and against, and shall pay all losses, costs, damages, or expenses whatsoever, including, without limitation, reasonable attorneys' fees and costs, which Salesperson may sustain or incur on account of (i) any breach by the Manufacturer of any of its obligations under this Agreement; (ii) any infringement by any Products of patents, trademarks, trade names, or other intellectual property of any third party, (iii) any breach of warranty in any way resulting from the sale of Products, (iv) any injury or death to any

person or damage to any property or both caused by any Products, and (v) the failure of any Products to comply with any applicable statute, law, rule, regulation, or order. The Manufacturer shall also include Salesperson as an additional insured on its product liability insurance policy. This section shall survive the termination of this Agreement.

- b) The Salesperson shall indemnify, defend, and hold the Manufacturer harmless from and against, and shall pay all third-party losses, costs, damages, or expenses whatsoever, including, without limitation, reasonable attorneys' fees, and costs, which the Manufacturer may sustain or incur on account of any breach by the Salesperson of any of its obligations under this Agreement. This section shall survive the termination of this Agreement.

11. Waiver

A waiver by either party of any breach of this Agreement by the other party shall not operate as a waiver of successive breaches, and a party's failure to insist upon strict performance hereunder in any one or more instances shall not be deemed a continuing waiver of any rights of such party.

12. Assignment

This Agreement may not be assigned by either party without prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, and their permitted assigns.

13. Severability

In case any one or more of the items or provisions in this Agreement should be declared by a court, arbitrator, or statute to be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining terms and provisions contained within this Agreement shall not in any way be affected or impaired.

14. Non-Solicit

The Manufacturer agrees and undertakes that during the term of this Agreement and for a one (1) year period following termination of this Agreement, that they will not solicit, recruit for employment, or extend any offer of employment, either directly or indirectly, to any of Salesperson's employees, subcontractors or consultants.

15. Governing Law

The parties agree that this Agreement shall be governed by the laws of the Province of Ontario.

16. Entire Contract

THIS AGREEMENT CONTAINS THE ENTIRE UNDERSTANDING OF THE PARTIES AND SUPERSEDES ALL PREVIOUS VERBAL AND WRITTEN AGREEMENTS, REPRESENTATION OR WARRANTIES.

17. Electronic Signature

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A counterpart of this Agreement executed and delivered by facsimile or electronic mail shall be equally as effective as delivery of a manually executed counterpart of this Agreement. This Agreement may be executed by DocuSign.

[signature page follows below]

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized representative as of the day and year first written above.

[THE MANUFACTURER]

By: _____

Name: _____

Title: _____

[SALESPERSON]

By: _____

Name: _____

Title: _____

SCHEDULE A – List of Products

The agreement should cover all products and services of the manufacturer unless the representative is to handle only specific products or services. If the representative is not handling all the products or services, the agreement should list the product lines, products, or services the rep is handling. This schedule should also indicate if new products or services developed or added by the manufacturer are to be included.

SCHEDULE B – Territory

Ensure this section clearly describes the territory working in. Naming specific provinces, counties, cities etc.

SCHEDULE C – House Accounts

SCHEDULE D – Commissions

APPENDIX – SAMPLE TERMINATION CLAUSES

1. Subject to early termination as hereinafter provided, the term of this Agreement shall be for one (1) year from the date hereof (the “Term”) and shall be renewed automatically from year to year for subsequent terms of one (1) year each (each a “Renewal Term”) unless either party notifies the other, in writing, of its intention not to renew at least ninety (90) days before the end of the initial term of this Agreement or any Renewal Term.
2. This Agreement shall become effective on its execution by the parties. The Agreement may be terminated by either party, with or without cause, by giving the other party ninety days’ written notice. An additional thirty days’ notice must be provided to Salesperson for each successive year of service under this contract. For example, after thirteen months, sixty days’ notice must be provided to Salesperson. Manufacturer will pay commissions on all orders submitted by Salesperson to, and accepted by, Manufacturer prior to the date of termination.
3. **TERM OF AGREEMENT AND TERMINATION.** This Agreement shall continue in full force and effect for a term of ____ years from the date of execution and shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns including purchasers of Manufacturer’s assets as more fully stated below:
The Agreement shall renew automatically for successive ____-year terms unless either party notifies the other, in writing, of its intention not to renew at least ninety (90) days before the end of the initial term of this Agreement or any renewal term.

This Agreement may be terminated only for the following reasons:

- a) by one party immediately, without notice, if the other party commits an act of fraud, files a voluntary petition for bankruptcy or reorganization, is the subject of an involuntary petition for bankruptcy, has its affairs placed in the hands of a receiver, enters into a composition or assignment for the benefit of creditors, or is insolvent.
 - b) Should either party be in material breach of or material non-compliance with any of the terms of this Agreement, the other party may terminate this Agreement by giving written notice of such breach or noncompliance and the right to correct the breach. If the breach is not corrected or compliance not made within 14 days of the date of such notice, this Agreement may be terminated immediately at the end of said 14 day period.
- a. **RIGHTS UPON EXPIRATION OR TERMINATION.** Upon the expiration or termination of this Agreement for any reason
- i. Representative shall be paid commissions on all orders which are dated or communicated to Manufacturer up to the effective date of expiration or termination, or during any Added Period authorized by this Agreement as set forth below regardless of when or where such orders are released, shipped or fulfilled.

Length of time Agreement has been in effect	Added Period for placement or communication of orders after effective date of expiration or termination
Less than two years	30 days added
Two to four years	60 days added
Four to five years	90 days added
Five years or more	120 days added

Representative shall be paid commissions for the full lifetime of the customer's program or product in which Products are being purchased by blanket orders, by requirements orders, by monthly, annual or multi year orders and by follow on agreements to purchase Manufacturer's products or services that were designed in or selected by the customer during the pendency of the agency relationship for as long as the business lasts.

- b. Manufacturer shall continue to furnish Representative copies of orders and invoices and other documentation on all customer business in the assigned territory on which Representative has earned or is to be paid a commission under this Agreement until the date of the final commission payment to Representative.
- c. Both parties have the right to audit (and shall retain such right after the effective date of termination of this Agreement) all documentation related to this Agreement. Such audit shall be scheduled on a date mutually agreed upon but no greater than 30 days after written request, allowing the other party or its duly appointed representative to audit documents of the other party, to be limited to documents relating to products or services sold, shipments, invoices, customer purchase orders, customer communications, customer payments, quotes and commission on sales in the assigned territory.
- d. In the event of termination of this Agreement due to the liquidation of Manufacturer's assets, without the continuation of manufacturing the business, amounts due and owing to Representative under the terms of the Agreement shall be allocated and paid from the proceeds at closing.