

## Appendix J

# Sample Sales Representative Agreement

MEMORANDUM OF AGREEMENT entered into in duplicate, this \_\_\_\_\_ day of \_\_\_\_\_.

BETWEEN: \_\_\_\_\_ duly incorporated under the laws of Canada, having its head office and principal place of business at Toronto, Province of Ontario (hereinafter referred to as party of the first part, PFP).

AND: A body politic and corporate, having its head office and place of business in \_\_\_\_\_ (hereinafter called the Sales Representative).

WITNESSETH THAT in consideration of the premises and of the mutual covenant and agreements hereinafter contained, the parties hereto agree each with the other as follows:

PFP hereby engages the Sales Representative to provide services in accordance with the terms and conditions of this Agreement for the sale of proprietary products (hereinafter called Equipment) listed in Schedule attached hereto and made an integral part hereof to markets in (hereinafter called Served Market).

### ***TERRITORY***

The geographical area (hereinafter called Territory) in which the Sales Representative shall undertake the responsibilities specified in this Agreement is \_\_\_\_\_.

### ***TERMS AND SCOPE***

The term of this Agreement shall be from \_\_\_\_\_ to \_\_\_\_\_ unless sooner terminated as hereinafter provided. The provisions of this Agree-

ment shall govern all transactions between PFP and the Sales Representative unless otherwise agreed to in writing by the duly authorized representatives of both parties.

### ***COMPANY RESPONSIBILITIES***

PFP agrees that during the term of this Agreement, it will, subject to and in accordance with the terms and conditions herein expressed:

- A. keep the Sales Representative advised of new products, sales plans, and objectives with respect to Equipment for Served Market Customers in the Territory;
- B. support the sales efforts of the Sales Representative by furnishing printed commercial and technical data and information and other publications that PFP may have available from time to time for export distribution; and
- C. pay a commission as provided in Article 5 hereof on orders for Equipment received and accepted by PFP from Served Market Customers in the Territory as a result of the effort of the Sales Representative. As used in this Agreement, the terms "order" or "orders" include contracts for Equipment with Served Market Customers in the Territory executed by PFP.

### ***SALES REPRESENTATIVE RESPONSIBILITIES***

The Sales Representative agrees that during the term of this Agreement, it will, subject to the terms and conditions herein expressed:

- A. maintain an adequate sales organization and use its best efforts to assist PFP in the sale of Equipment to Served Market Customers in the Territory;
- B. maintain active contacts with Served Market Customers in the Territory;
- C. keep PFP fully informed of all governmental, commercial, and industrial activities and plans that do or could affect the sale of Equipment to Served Market Customers in the Territory;
- D. provide market information to PFP on Served Market Customers' and competitors' activities;
- E. recommend improvements to sales plans, assist in developing strategy, and clarify the Equipment requirements of Served Market Customers in the Territory;

- F. as requested, transmit proposals and technical data to Served Market Customers in the Territory, interpret customer inquiries, requirements, and attitudes, and assist in contract negotiations. (All proposals so transmitted will contain terms and conditions of sale substantially in accordance with PFP's Standard Terms and Conditions of Sale, a copy of which is attached hereto and is subject to change by PFP from time to time. No proposal shall be transmitted to a Served Market Customer unless terms and conditions of sale are approved by PFP or the Standard Terms and Conditions of Sale are incorporated in such proposal.); and
- G. perform such liaison services with Served Market Customers in the Territory as PFP may from time to time direct relative to any order(s) awarded to PFP from the supply of Equipment, including assistance in the resolution of any claims or complaints of such Customers arising out of PFP's performance of said order(s).

### **COMPENSATION**

- A. As compensation to the Sales Representative for services rendered hereunder, PFP agrees to pay the Sales Representative a commission on the following orders for PFP's proprietary equipment from Served Market Customers in the Territory during the term of this Agreement:
  - i. Orders that are forwarded by the Sales Representative.
  - ii. Orders that the Sales Representative has specifically identified to PFP being forthcoming directly from a Served Market Customer in the Territory when, in the absolute judgment of PFP such commission may be warranted by the effort used by the Sales Representative resulting in said orders.
- B. The commission, based on the net sale price (FOB factory), will be paid in accordance with the Schedule(s) attached hereto and made an integral part of this Agreement.
- C. Said commission shall be disbursed in Canadian dollars to the Sales Representative within thirty days subsequent to the payment for the Equipment delivered to the Served Market Customer in accordance with the terms of payment established and accepted in the contract between PFP and the Served Market Customer.
- D. No commissions will be paid on the value of technical, construction, installation, or similar services, nor on the value of insurance, bonds, interest, ocean freight, or other charges that may be included in the PFP's invoice to a Served Market Customer.

- E. It is understood that if an order should be rescinded, revoked, or repudiated by a Served Market Customer for reasons beyond PFP's control or by PFP for breach of contract or by either party for force majeure causes, or it becomes invalid or inoperative due to any governmental regulation, the Sales Representative shall not be entitled to a commission with respect to such order, except pro rata to the extent of any amounts PFP may have received and retained as payment for Equipment delivered to a Served Market Customer.
- F. It is further understood that no compensation, by way of commission or otherwise, shall be due the Sales Representative in connection with an order on which a commission would otherwise be payable, if as to such an order:
  - i. any applicable governmental law, rule, or regulation prohibits or makes improper the payment of any commission, fee, or other payment to a Sales Representative;
  - ii. any Served Market Customer makes it a condition that no commission, fee, or payment be made to a Sales Representative; or
  - iii. any action has been taken by the Sales Representative in violation of its commitments set forth in Article 6, paragraphs C and D.

### ***RELATIONSHIP OF PARTIES AND CONTROLLING LAWS***

- A. PFP may assign the installation and commissioning portion of its contract to the Sales Representative but, except as aforesaid, this Agreement and any rights hereunder are nonexclusive and nonassignable, and any assignment by one party without the prior written consent of the other party shall be void. The Sales Representative is an independent contractor to PFP. It is understood that the Sales Representative or its agents, subsidiaries, affiliates, and employees are in no way the legal representatives or agents of PFP for any purpose whatsoever and have no right or authority to assume or create, in writing or otherwise, any obligation of any kind, expressed or implied, in the name of or on behalf of PFP. PFP reserves the right to determine in its sole discretion the acceptability of any order, any provisions thereof, or any condition proposed by the customer and shall in no way be obligated to bid, quote to, or negotiate with any Served Market Customer.
- B. This Agreement and any services hereunder are subject to and shall be governed by all the applicable laws and regulations of Canada; the rights and obligations of the Sales Representative as well as those of PFP under or in connection with this Agreement shall be governed by

such laws and regulations and by the law of the Province of Ontario, Canada.

- C. The Sales Representative agrees to comply with the law applicable to the performance of its obligations under the terms of this Agreement. Without limitation to the foregoing, the Sales Representative will comply fully with the export control laws and regulations of the Canadian Government with respect to the disposition of products and the printed commercial and technical data and information and other publications supplied by PFP. Further, the Sales Representative agrees that it will not pay, nor will it make any offer or commitment to pay, anything of value (either in the form of compensation, gift, contribution, or otherwise) to any employee, representative, person or organization in any way connected with any Customer, private or governmental, where such payment is contrary to applicable law, including the laws of Canada and the laws of the country in which the Sales Representative provides services under this Agreement.
- D. With respect to any transaction arising under this Agreement, it is specifically understood and agreed that neither the Sales Representative nor its employees or representatives shall receive any payments in the nature of a rebate or similar benefit paid directly or indirectly by the Customer, nor shall any employee or representative of PFP receive any such payment paid directly or indirectly by the Sales Representative or by the Customer.

### ***EXPIRATION, RENEWAL, TERMINATION***

- A. This Agreement shall automatically expire at the end of the term specified in Article 2 hereof unless specifically renewed prior thereto by mutual consent given in writing by the parties hereto.
- B. This Agreement may be terminated prior to the completion of the term specified in Article 2 hereof:
  - i. by mutual consent given in writing by the parties hereto;
  - ii. by either party at will, with or without cause, upon no less than sixty days notice in writing by registered mail, cable, or personal delivery to the other party; or
  - iii. by PFP upon one day's similar notice in the event the Sales Representative attempts to assign this Agreement or any right hereunder without PFP's prior written consent; there is a change in the control or management of the Sales Representative that is unacceptable to PFP; the Sales Representative ceases to conduct its operations in the normal course of business; a receiver for the Sales Representative

is appointed or applied for or it otherwise takes advantage of an insolvency law; the Sales Representative represents other parties whose representation, in PFP's opinion, involves a conflict with the Sales Representative's obligations hereunder; or the Sales Representative breaches this Agreement or acts in any manner deemed by PFP to be detrimental to the best interest of PFP. The foregoing events shall without limitation be deemed to be cause for termination by PFP.

### ***OBLIGATIONS UPON EXPIRATION OR TERMINATION***

In the event that an order from any Served Market Customer in the Territory for the supply of Equipment is accepted by PFP prior to the date of expiration or termination of this Agreement, the obligations assumed by both parties hereunder with respect to any such order shall continue in force until fully performed. In the event this Agreement expires or is terminated, and within the date of such expiration or termination an order from a Served Market Customer in the Territory for the supply of Equipment is accepted by PFP and is implemented within said period by financial arrangements acceptable to PFP, the Sales Representative's rights to commission payments will be fully protected, provided such purchase order is awarded in the sole opinion of PFP as a result of services performed by the Sales Representative prior to the effective date of expiration or termination. Such acceptance of an order from, or the sale of any Equipment to, a Served Market Customer after the expiration or termination of this Agreement shall not be construed as a renewal or extension hereof, but the obligations undertaken in this Article 8 shall survive such expiration or termination.

### ***PRIVATE INFORMATION***

- A. The Sales Representative shall maintain in confidence and safeguard all business and technical information that becomes available to it in connection with this Agreement, the information being either of proprietary nature or not intended for disclosure to others. This obligation shall continue for five years after expiration or termination of this Agreement.
- B. Knowledge or information of any kind disclosed by the Sales Representative to PFP shall be deemed to have been disclosed without obligation on the part of PFP to hold the same in confidence, and PFP shall have full right to use and disclose such information, subject to the

approval of the Sales Representative, whose approval shall not be withheld without proper cause and without any compensation to the Sales Representative beyond that specifically provided by this Agreement.

### ***COMPANY TRADEMARKS AND TRADE NAMES***

The Sales Representative agrees that it will comply at all times with the rules and regulations furnished to the Sales Representative by PFP with respect to the use of and trademarks and trade names; it will express and identify properly the “Authorized Sales Representative” relationship with PFP for Equipment; it will not publish or cause to be published any statement, nor encourage or approve any advertising or practice, that might mislead or deceive any parties or might be detrimental to the good name, trademark, goodwill, or reputation of PFP or its products. The Sales Representative further agrees upon request to withdraw any statement and discontinue any advertising or practice deemed by PFP to have such effect.

### ***LIMITATION OF LIABILITY***

Neither party to this agreement shall have liability to the other with respect to the claims arising out of, in connection with, or resulting from this agreement, whether in contract, tort (including negligence of any degree), or otherwise except as provided under the terms of this agreement.

### ***RELEASE OF CLAIMS***

In consideration of the execution of this Agreement by PFP, the Sales Representative hereby releases PFP from all claims, demands, contracts, and liabilities, if any thereby, as of the date of execution of this Agreement by the Sales Representative, except indebtedness that may be owing founded upon a written contract.

### ***FAILURE TO ENFORCE***

The failure of either party to enforce at any time or for any period of time the provisions hereof in accordance with its terms shall not be construed to be a waiver of such provisions or of the right of such party thereafter to enforce each and every provision.

### ***NOTICES***

Any notice, request, demand, direction, or other communication required or permitted to be given or made under this agreement or in connection therewith shall be deemed to have been properly given or made if delivered to the party to whom it is addressed, or by registered mail, telegram, cable, or telex addressed as follows.

### ***EXECUTION AND MODIFICATION***

- A. This Agreement constitutes the entire and only agreement between the parties respecting the sales representation to the Served Market of Equipment specified herein.
- B. This Agreement wholly cancels, terminates, and supersedes any and all previous negotiations, commitments, and writing between the parties with respect to Equipment. No change, modification, extension, renewal, ratification, rescission, termination, notice of termination, discharge, abandonment, or waiver of this Agreement or any of the provisions hereof nor any representation, promise, or condition relating to this Agreement shall be binding upon PFP unless made in writing and signed by duly authorized personnel of PFP,

IN WITNESS WHEREOF, this agreement has been executed by both parties.