

Dealer Resale Agreement

- 🔊 This is the sample contract to use when you want to sign on resellers (Retailers, Value Added Resellers (VARs), etc.)
- 🔊 It is very comprehensive and includes a nice cover letter.



[Company Legal Name]

[Address] * [City, [State] [Zip Code]

[Telephone] * [WebSite Address]

🔊 The first part of the cover letter should be completed and distributed to the other party along with a copy of the Dealer Resale Agreement.

[Date]

[Name]

[Title]

[Reseller]

[Address]



Dear [First Name],

Thank you for your interest in marketing our products. We're sure you'll do very well marketing our products and we are looking forward to working with you.

Attached is our "Dealer Resale Agreement," the purpose of which is to establish the terms and conditions of our Reseller relationship. The following is a synopsis of what our agreement says:

- 1) We want you to be our Dealer / Retailer for our products in your area.
- 2) You pay the prices spelled out in this agreement, but we will notify you of any changes and you can cancel orders already shipped if we change our prices. You've got 10 days. On the other hand, if we drop our prices, you'll be credited for unsold product on hand.
- 3) We will do our best to accommodate your shipping requirements assuming we have stock on hand but, if you haven't paid us, we might hold shipments until you send us the money.
- 4) We stand behind our products and if something is wrong, we will give you your money back and are not liable for anything more.
- 5) We are not related in any way except that you sell our stuff.
- 6) You'll do everything you can to promote and sell our stuff to the appropriate customers.
- 7) We own our trademarks, but you can use them under certain conditions.
- 8) If we change any arrangements we do it in writing and it becomes part of this agreement. There are some time limits for working out any problems, and we can our relationship if we can't work it out.
- 9) We will keep each other's secrets confidential.
- 10) This is our entire deal with each other. We won't break any laws. We're off the hook in the event of an "Act of God."

- 11) No matter what, we will use binding Arbitration in the event of a dispute and live with the arbitrator's decision whether we like it or not—we agree that we both want to prevent any dispute from escalating to an expensive court battle.
- 12) The usual general contract stuff.

Thank you for choosing to business with [Company]. If you have any questions, please feel free to contact me. We look forward to a profitable relationship together.

Sincerely,

[Owner/Founder]

[Title]



From JIAN

NOTICE:

We wish we could provide an agreement that was tailored *exactly* to your business. While this is not always possible, we feel that we've come very close and that this document provides you with the head-start that you need to get your deal moving. Nevertheless, we must make this disclaimer:

- 🔊 **Do Not Use This Agreement 'As-Is.'**
- 🔊 **This Agreement Is Not Legal Advice.**
- 🔊 **Read it Thoroughly and Make All Appropriate Changes to Fit Your Requirements.**
- 🔊 **You Should Have this Agreement Reviewed and Approved by a Qualified Attorney at Law Before Using It.**
- 🔊 **JIAN Accepts No Liability for the Effectiveness of This Document For Your Purposes.**

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We're building a network of business experts who are eager to help you when you need it. They can review your work, make suggestions, handle unique situations and introduce you to influential people. On our website you can search by expertise and location, then e-mail or jump straight to their website. Although they are professionals and charge for their services, most offer an initial consultation free of charge. They're in your area and you can contact them directly.


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Things change, laws change, the world changes... new ideas come along all the time. When you register, you can access our website to get updates and changes... like new and improved spreadsheets and documents. They can be downloaded directly to your computer.

- Please visit our website under [Updates](#).
- Remember to bookmark our website: www.JIAN.com

Editing Your Sample Contract

Since this entire agreement is formatted in Word, you can edit it like any other Word document. You can jump from variable to variable by clicking the above  green arrows (JIAN Menu) which will take you forward / backward and highlight the entire sample text identified within the “[]” brackets – simply edit / type-over with your information.


To make sure you have filled in all the variables, use Word's 'FIND' function to locate any “[]” which may contain an unedited variable.

- Click the  icon in the JIAN menu above to turn the expert comments on/off.
- Upon completion, delete any unnecessary blank lines that remain.
- You may format this document any way you like.
- Delete this page.

Dealer Resale Agreement

Effective Date: [Date]

Agreement is by and between [Company Legal Name] (“[Company]”),
a [State], [Corporation / Partnership / Sole Proprietorship]
located at [Address],
[City], [State] [Zip Code]

AND [Reseller’s full legal name], ([Reseller’s abbreviated name]),
a [State], [Corporation / Partnership / Sole Proprietorship],
located at  [Reseller's Address].

Summary

[Company] and [Reseller] agree that [Reseller] will act as an authorized Reseller for [Company] developed Products according to the following terms and conditions:

1. Appointment & Territory

- 🔊 In Section 1, you appoint [Reseller] to sell your products. You can elect to make this an exclusive or non-exclusive Agreement. If it is an exclusive Agreement, then you may not contract with any other [Reseller]s. If you make this agreement non-exclusive, you won't be able offer another reseller an exclusive agreement. You may want to limit exclusivity to a specific geographic area, product line or customer type.
- 🔊 If this is an exclusive Agreement and you want to limit the exclusivity to a specific geographic area, then the second insert should be used to describe the limitations of that geographic area.

[Company] appoints [Reseller] as an authorized, (non-) exclusive end-user [Reseller] [Describe geographic area e.g., the City of Los Angeles] for [Company] Products listed in Exhibit A ("Company Products") during the term of this Agreement.

2. Price & Terms

- 🔊 Section 2 sets the price to be paid by [Reseller] for the products as well as the terms of the sale such as returns and price increases. With respect to all of the inserts, the standard time periods are bracketed; however, you may change those.
- 🔊 Section 2.1 refers to Exhibit B (attached to the end of this Agreement) that lists the prices, terms and conditions. [Company] may change its prices, but it must submit the new prices to [Reseller] in writing. If the price of any unshipped product increases, [Reseller] can cancel that order by giving notice to [Company].
- 🔊 Also, Section 2.1 addresses the amount of time [Reseller] has to cancel his or her order after receiving a price increase notice vis a vis the product(s) ordered.

2.1 [Reseller] will purchase [Company] Products at the prices, terms and conditions defined in Exhibit B, which prices [Company] may change at any time upon written notice to [Reseller]. In the event of a price increase, [Reseller] may cancel any unshipped or shipped orders by notice of [Company] within [ten (10) Days] of receipt of notice of the price increase.

☞ Section 2.2 discusses what happens in the event of a price decrease. [Company] would credit [Reseller] the amount of any such decrease, but only on products unsold and shipped within the bracketed period prior to the decrease.

☞ With respect to unsold merchandise in possession of [Reseller], insert the amount of time after that merchandise was shipped that [Reseller] will be able to receive a credit for the decrease.

2.2 In the event of a price decrease, [Company] will credit [Reseller] for all unsold Products shipped to [Reseller] within [thirty (30) Days] prior to such price decrease, by crediting [Reseller] with the amount equal to the difference between the price at which such Products were sold to [Reseller]. [Reseller] will supply [Company] with documentation confirming the quantity of unsold Products and the prices paid for the same and provided that [Company] will have the right to audit during normal business hours the accuracy of such documentation. Orders received by [Company] after the effective date of a price change will be billed at the new price.

☞ Section 2.3 deals with paying for orders. In general, all orders will have to be paid for in advance; however, if [Company] approves credit, payment will be due within the period of time following shipping (listed in the brackets). Amounts not paid will incur a service charge equal to the amount entered in the brackets.

☞ In the event that [Reseller] does not pay the amounts due [Company], [Company] may repossess the product subject to written notice. [Company] is not limited to this remedy as it will still have other legal recourse.

☞ The first insert identifies when the payment is due on credit orders. It is within this time period following the shipment, that the payment is due.

☞ The second insert relates to the service charge added to any unpaid balance. Note that some states limit this amount so if you are unsure if the rate you are charging is beyond the state maximum, you should signify that the service charge is "equal to the highest rate permitted by law."

☞ The third insert refers to the period of time required after notice is given to [Reseller] before [Company] can repossess any [Company] products not paid for.

2.3 All [Reseller] orders will require payment in advance by check, money order, or credit card unless special credit arrangements have been agreed and approved by [Company]. If credit is approved, then payment is due within [thirty (30) Days] from the date of shipment. Invoices not paid within this period will incur a service charge [at the rate of two percent (2%) per month or equal to the highest rate permitted by law) on any outstanding overdue balance.

2.4 Notwithstanding any other terms or provisions of this Agreement, should [Reseller] default in payment of the purchase price when due, or fail to comply with any provisions of this Agreement, [Company] may cancel the sale of such Products or enforce the terms of such sale, and may remove or repossess such inventory on [ten (10) Days] prior written notice and take such other action as it may deem necessary to protect its interest, it being understood that the remedies contained in this section are cumulative and in addition to all other rights and remedies of [Company].

3. Shipments, Cancellations & Changes

☞ As with previous sections, we have included commonly used time periods for the inserts. Feel free to modify them as needed.

☞ Section 3.1 sets the time period for the shipment. It gives [Company] a number of outs, including availability and the size of the order.

☞ The insert in Section 3.1 sets the range for shipment.

3.1 [Reseller] may request shipment up to [Ninety (90) Days] after order date. The Shipments are subject to availability. [Company] reserves the right to schedule and reschedule any order, in [Company]'s discretion, and to decline any order for credit reasons or because the order specifies an

unreasonably large quantity or makes an unreasonable shipment request.

- ☞ Section 3.2 deals with cancellation. [Reseller] can cancel within the bracketed period before shipment at no charge. After that period, [Reseller] will be charged the fee (entered in brackets). No cancellations or changes are permitted after the shipment. The balance of the section deals with the shipping issues and should be reviewed.
- ☞ The first insert sets the number of days prior to the scheduled shipment that an order can be canceled at no charge.
- ☞ The second insert sets the penalty for any changes to the order after the period set in the first insert but before shipment.

3.2 [Reseller] may cancel a shipment or request changes in a scheduled shipment date at no charge up to [5] (five) working days before scheduled shipment. Cancellation or changes prior to shipment will be subject to a charge of [5]% (five percent) of the shipment price. No cancellation or change may be made after shipment. [Company] will use reasonable efforts to meet any scheduled shipment date. However, [Company] will not be liable for delay in meeting a scheduled shipment date for any reason. If [Company] Products are in short supply, [Company] will allocate them equitably, in [Company]'s discretion, among [Reseller] and all other resale channels. [Company] is prepared to drop-ship [Company] Products ([Reseller] initiated orders) to customers directly upon receipt of a properly executed Customer Purchase Order, or upon receipt of a written [Reseller] Order (identifying the customer details).

All other [Reseller] approved orders will be shipped directly to [Reseller]'s distribution facilities listed on Exhibit C and only after receipt of a written order from [Reseller].

- Title to [Company] Products and risk of loss and damage will pass to [Reseller] F.O.B. shipping point upon delivery to a common carrier.
- [Company] retains the right to fulfill orders received from customers directly.
- [Reseller] prices do not include transportation cost.
- [Reseller] prices do not include State and Local taxes. [Reseller] will pay these taxes unless [Reseller] has given [Company] the appropriate resale exemption certificates.

4. Warranty & Limitations of Remedies

- ☞ In the event a product is found to be defective within a certain period of time after the sale to [Reseller] but before [Reseller] sells the product. Insert the period of time needed to contact [Company] regarding a defective product. (90 days may be too short.)
- ☞ [Reseller] must contact [Company] *before* shipping any product back and first receive a return authorization.
- ☞ [Company] will then determine whether it wants to repair or replace the product.

4.1 [Reseller] and [Company] agree that the procedure provided below for return and repair or replacement of defective Products will be [Reseller]'s exclusive remedy for any claim relating to any alleged defect or nonconformity in [Company] Products. If [Reseller] finds that any Company Product sold to [Reseller] by [Company] is defective within [ninety (90)] days after its shipment to [Reseller] and prior to its sale by [Reseller], [Reseller] will contact [Company] regarding its repair or replacement. [Reseller] will not ship (return) any Product to [Company] without a "Return Authorization Number" that can be obtained by calling the [Company] Customer Service department. Approval for return or replacement will be based solely on whether the Product is in fact defective and will not be unreasonably withheld. [Company] will be entitled to determine its discretion whether to replace rather than repair the Product. [Company] does not warrant the performance of the Product, as more fully defined in a written limited warranty included with each Product, the terms of which [Company] may change from time to time. This warranty is the only warranty covering any [Company] Product sold under this Agreement.

4.2 No Other Warranty is Expressed or Implied

- ☞ This is a standard warranty disclaimer and this is the only warranty being made.
- ☞ [Reseller]'s sole remedy in the event of a defective product, is the replacement or repair of the product

[Company] specifically disclaims the implied warranties of merchantability and fitness for a particular purpose. The remedies provided in this Agreement, including the procedure for return of defective goods, are [Reseller]'s sole and exclusive remedies. [Company] will not be liable for any direct, indirect, special, incidental or consequential damages whether based on contract, tort or any other legal theory.

5. Relationship

- ☞ [Reseller] is not an agent or legal representative of [Company], and that anything [Reseller] says or does with respect to third parties has no effect on [Company].
- ☞ It also states that [Reseller] sets its own prices regarding [Company]'s products, that [Company] does not have to offer all of its products to [Reseller] and that [Reseller] can sell products which compete with those of [Company].

[Reseller]'s relationship to [Company] will be that of an independent contractor engaged in purchasing [Company] Products for resale to [Reseller]'s customers. [Reseller] and its employees are not agents or legal representatives of [Company] for any purpose and have no authority to act for, bind or commit [Company]. [Reseller] and [Company] agree that this Agreement does not establish a franchise, joint venture or partnership. Any commitment made by [Reseller] to its customers with respect to quantities, delivery, modifications, interfacing capability, suitability of Product, or suitability in specific applications will be [Reseller]'s sole responsibility unless prior written approval is obtained from [Company].

[Reseller] has no authority to modify the warranty contained in Section 5 of this Agreement or to make any other commitment on behalf of [Company], and [Reseller] will indemnify [Company] from liability for any such modified warranty or other commitment by [Reseller]. [Reseller] has the right to determine its own resale prices, and no [Company] representative will require that any particular price be charged by [Reseller] or grant or withhold any treatment to [Reseller] based on [Reseller]'s pricing policies. [Reseller] agrees that it will promptly report directly to a Company officer any effort by [Company] personnel to interfere with its pricing policies.

This Agreement applies only to [Company] Products listed on Exhibit A. [Reseller] acknowledges that [Company] may market other Products, including Products in competition with those listed on said Exhibit A, without making them available to [Reseller]. [Company] reserves the right to advertise, promote and sell any Product in competition with [Reseller] as [Company] deems appropriate.

6. Sales Promotion & Support

- ☞ Section 6 places a number of restrictions and requirements on [Reseller] such as selling products face-to-face, training employees, and only selling the products at locations listed on Exhibit C.
- ☞ We suggest that you carefully read Sections 6.1 and 6.2 and make changes as necessary. A [Reseller] may want to delete all or part of these requirements. [Company] should keep as many requirements as are appropriate since most of them are to its benefit.

6.1 [Reseller] will use its best efforts in good faith to promote, demonstrate and sell [Company] Products on a face-to-face basis in an end-user environment so as to create the largest volume of profitable business for [Company], to ensure the highest quality of pre-sale and post-sale support to end-users and to promote the goodwill, name and interest of [Company] and [Company] Products. [Reseller] will train and maintain an adequate number of employees to properly promote, demonstrate, sell and

provide post-sale support of [Company] Products, and to otherwise carry out its obligations under this Agreement. [Reseller] will ensure that its employees complete appropriate training courses as scheduled by [Company]. [Reseller] will sell [Company] Products only at its approved locations listed on Exhibit C and only to end-user customers (including government and corporate users as well as individual users).

Only with prior written and express approval of [Company], [Reseller] may sell [Company] Products purchased during the term of this Agreement to other resellers that are currently authorized to carry those Company Products, as necessary for stock balancing or other purposes. [Reseller] may not sell Products to unauthorized resale outlets. [Reseller] will provide [Company] with monthly sales reports that will include the number of Products sold to end-users for each month, the end-users zip code, date of purchase and Product configuration. [Reseller] will permit [Company], during normal business hours, to inspect the sales and support facilities of [Reseller] and all customer records and correspondence relating to the sale and support of [Company] Products.]

[6.2 [Reseller] will ensure that a customer is provided with a knowledge of all facilities provided by [Company] and [Reseller], including but not limited to: [Company] Products, HOT LINE telephone numbers, [Company] Product Registration Cards, [Company] and Approved [Reseller] training courses, [Company] Product Warranty information.]

7. Trademark Usage Licensing

☞ [Company] owns its trademarks, but allows [Reseller] to use them for marketing purposes provided that [Reseller] comply with certain standards in its use of the trademark(s).

7.1 From time to time, [Company] may designate one or more Company trademarks as available for [Reseller]'s use, and will provide standards for that use, in [Company] materials. [Company] authorizes [Reseller] to use these designated marks.

7.1.1 [Reseller] will use the designated marks according with these standards solely in advertising and promoting [Company] Products, in good taste and in a manner that preserves their value and [Company]'s rights to them.

☞ You don't want anyone using your trademarks or trade names in any way that implies that their relationship with you is more than you want it to be. Also, if [Company] asks [Reseller] to discontinue or change its use of the trademark, it must comply immediately.

7.1.2 [Reseller] will not use any Company trademark or trade name in any way that implies [Reseller] is an agency or branch of [Company]. [Reseller] will immediately change or discontinue any use as requested by [Company].

☞ It's crucial to state clearly that you own your trademarks and tradenames—products and services can change, but the names are what your customers remember.

7.1.3 [Reseller] has no right, title or interest in any [Company] trademark or trade name and is not authorized to use any [Company] trademark or trade name other than the designated marks. Any rights in any [Company] trademark or trade name acquired through [Reseller]'s use belong solely to [Company].

☞ [Reseller] is limited in its use of materials given to it by [Company] and it may not copy or modify the materials without [Company]'s consent.

7.2 Unless prior written consent is granted by [Company], [Reseller] will not copy or modify any materials supplied under this Agreement, except as noted in Exhibit B. [Reseller] will not remove or omit any copyright notice contained in these materials.

☞ Section 7.3, 7.3.1 and 7.3.2 states that [Reseller] can distribute the materials and use them for demonstration purposes according to license terms (if any). This usually applies to intellectual property related products like software and not to a hard good product.


7.3 [Reseller] is granted the right to distribute materials supplied by [Company] according to the license terms supplied with these materials. [Reseller] may also use the materials for demonstration purposes also according to those license terms.

🔊 [Optional—software related]

7.3.1 Where an end-user Agreement is supplied with the Product, the user must sign the Agreement or indicate acceptance by opening the media package in order to obtain a license to use it. Use of the Product will be subject to the terms of the Agreement.

🔊 Section 7.3.2 states that if, by the terms of the license, the product is designated confidential or a trade secret, [Reseller] must safeguard that information.

7.3.2 Where the Product is designated as confidential or a trade secret in its license terms, [Reseller] will safeguard the Product according to industry standards and applicable law, using the same degree of care to prevent unauthorized disclosure as [Reseller] uses with its own trade secrets and those of other suppliers.

🔊 Section 8 addresses changes to the Agreement. Any written changes provided to [Reseller] automatically become part of the Agreement on the date given in the notice to [Reseller] unless [Reseller] objects in writing within the amount of time inserted in the brackets (see Section 8, first insert). A short period like  days is reasonable and forces them to speak up or you can assume they are going along with it.

🔊 Furthermore, either party may terminate the Agreement for any reason or no reason upon the period of time (entered in the brackets) (see Section 8, second insert). Regarding the period of time required by either party in order to terminate the Agreement, think about your ability to plan ahead, about your ability to replace the reseller and the amount of time that might really take.

🔊 If [Reseller] is for some reason not complying with its obligations under this Agreement, [Company] may give [Reseller] notice and require that it remedy those actions. Regarding the period of time provided to [Reseller] by [Company] to remedy a deficiency before [Company] terminates the Agreement (though it is not required to terminate), how much time do you want to allow the reseller to dawdle before they must do something?

🔊 “Indemnity” means: protection or insurance against losses, damage, etc.

8. Amendment and / or Termination

[Company] may, from time to time, give [Reseller] written notice of amendments to this Agreement. Any such amendment will automatically become a part of this Agreement on the effective date specified in the notice unless [Reseller] objects in writing within [ten] working days of the notice date. Each party acknowledges that the other has made no commitments regarding duration or renewal of this Agreement beyond those expressly stated in this Agreement. Either party may terminate this Agreement with or without cause, at any time upon [ninety] days written notice. If [Company] determines that [Reseller] is deficient in meeting responsibilities under this Agreement, [Company] may provide written notice of such deficiencies and establish a reasonable period of time, not to exceed [sixty] days, in which [Reseller] may remedy such deficiencies. If [Reseller] does not remedy the deficiencies, [Company] may terminate this Agreement at its discretion.

No waiver by [Company] of any deficiency will constitute a waiver of [Company]'s rights to terminate this Agreement for a subsequent deficiency. Upon termination or expiration of this Agreement, [Reseller] will immediately cease to be an authorized [Company] dealer and will refrain from representing itself as our Dealer and from using any [Company] trademarks or trade names. Upon any such termination or expiration, at the option of either party, [Company] will repurchase any of [Company] Products sold to [Reseller] by [Company] under this Agreement in their unopened, original packaging and marketable as new merchandise. [Company] will pay [Reseller] [Company]'s then current [Reseller] price or

[Reseller]'s original purchase price for such Products, whichever is lower. The indemnities provided in this Agreement will survive termination or expiration of this Agreement.


9. Confidentiality

- ☞ If either party is being provided with significant confidential or proprietary information, you may want to execute a Confidentiality / Non-Compete Agreement.

[Reseller] agrees to maintain confidential and protect in the same manner that [Reseller] protects valuable confidential information belonging to [Reseller] any information furnished by [Company] that is labeled confidential.

10. General Provisions

- ☞ The General Provisions that follow are fairly standard. These provisions enhance the balance of the Agreement by defining certain common issues such as notice, assignment, legal remedies, waiver, and attorney fees, etc..
- ☞ You may or may not want to make this deal public – at least limit that event by this agreement and work out if/how/when you want to do that later.

10.1 **Publicity.** Neither party  make any public announcement or issue any press release concerning the terms of this Agreement without the prior approval of both parties.

- ☞ Make it clear that you will not try to hire away each others employees. If you do or it happens then there is compensation built-in and you can avoid further legal proceedings.

7.3 **Non-Solicitation.** Neither party shall solicit for employment or hire the other's current or future employees, either directly or indirectly, during the Term of this Agreement, without obtaining the other's prior written approval. Should an employee change employment from one party to the other, the new employer shall pay the old employer a fee equivalent to Twenty Percent (20%) of the employee's new compensation, annualized for the first year.

- ☞ You must decide which state governs this Agreement and where any legal action would be taken. Generally, it is your (company's) state of residence.

7.4 **Governing Law & Jurisdiction.** This agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of [State], without reference to conflict of law principles. The parties hereby expressly consent to the jurisdiction and venue of the federal and state courts within the state of [State]. Each party hereby irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party at its address set forth in the preamble of this Agreement, such service to become effective thirty (30) days after such mailing.

- ☞ This Agreement is intended to be the only Agreement and that no other documents or communications are binding. Therefore, it is very important to make sure that everything [Company] and [Client] have agreed to is included in this Agreement. Otherwise, it is as if it were not agreed to.

7.5 **Entire Agreement.** This Agreement, including the attached exhibits, constitutes the entire Agreement between both parties concerning this transaction, and replaces all previous communications, representations, understandings, and Agreements, whether verbal or written between the parties to this Agreement or their representatives. No representations or statements of any kind made by either party, which are not expressly stated in this Agreement, shall be binding on such parties.

- ☞ Any changes to this Agreement must be in writing and signed by the party against whom that writing is to be used.

7.6 **All Amendments in Writing.** No waiver, amendment or modification of any provisions of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party


against whom such waiver, amendment or modification is sought to be enforced. Furthermore, no provisions in either party's purchase orders or in any other business forms employed by either party will supersede the terms and conditions of this Agreement.

☞ All notices between the parties must be in writing and either delivered in person or by certified or registered mail, return receipt requested.

7.7 Notices. Any notice required or permitted by this Agreement shall be deemed given if sent by registered mail, postage prepaid with return receipt requested, addressed to the other party at the address set forth in the preamble of this Agreement or at such other address for which such party gives notice hereunder. Delivery shall be deemed effective three (3) days after deposit with postal authorities.

☞ In the event of a lawsuit or any legal proceeding involving this Agreement, the losing party will have to pay the winning party his or her costs and expenses, including reasonable attorney fees.

7.8 Costs of Legal Action. In the event any action is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs of enforcement including, without limitation, attorneys' fees and court costs.

☞ Legal remedies, i.e., money damages, may not be sufficient; therefore, both parties agree to equitable remedies such as an injunction where the breaching party would be required to do or not to do something. 

7.9 Inadequate Legal Remedy. Both parties understand and acknowledge that violation of their respective covenants and Agreements may cause the other irreparable harm and damage, that may not be recovered at law, and each agrees that the other's remedies for breach may be in equity by way of injunctive relief, as well as for damages and any other relief available to the non-breaching party, whether in law or in equity.

☞ Assuming the parties wish to use Arbitration in the event of a dispute, the following section should be included. You take your chances with an arbitrator, but it keeps legal costs down and keeps you out of a drawn out legal process.

7.10 Arbitration. Any dispute relating to the interpretation or performance of this Agreement shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in [County], [State] in accordance with the then-existing rules of the American Arbitration Association. Judgment upon any award by the arbitrators may be entered by any state or federal court having jurisdiction. Both parties intend that this Agreement to arbitrate be irrevocable.

☞ Merely delaying to bring an action that one party has a right to bring does not cause that party to lose or waive his right to pursue that action.

7.11 Delay is Not a Waiver. No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided in this Agreement, shall operate as a waiver of any such right, power or remedy.

☞ Neither party will be blamed if there is a problem resulting from something beyond its control, such as an earthquake, flood, war.

7.12 Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any Act of God, strike, fire, flood, governmental acts, orders or restrictions, Internet system unavailability, system malfunctions or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party (a "Force Majeure Event"), the party who has been so affected shall give notice immediately to the other party and shall use its reasonable best efforts to resume performance. Failure to meet due dates resulting from a Force Majeure Event shall extend such due dates for a reasonable period. However, if the period of nonperformance exceeds sixty (60) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice,

terminate this Agreement effective immediately upon such notice or at such later date as is therein specified.

- ☞ This section limits the ability of either party to transfer any of its rights or delegate any of its duties to third parties.
- ☞ You want to make sure that you can sell your business along with all of the relationships you have developed along the way. (Often these relationships can add tremendous value to your business and you want to make sure that all of your agreements can be transferred to the new owners.) I wouldn't want to seek (let alone pay for) permission to sell my company.
- ☞ Generally, neither party may assign their respective rights to a third party; however, with the possible exception of assignment to a successor corporation or partnership, either party may transfer its rights or obligations under this Agreement without the approval of the other party. This Agreement would be binding on the 3rd party.
- ☞ However, you may want to limit each other's ability to pass along this deal to another possibly unknown and possibly unfriendly entity. The second paragraph prevents unauthorized transfer of responsibilities...
- ☞ CHOOSE one or the other of these two following paragraphs.

7.13 **Assignability & Binding Effect.** Except as expressly set forth within this Agreement, neither party may transfer or assign, directly or indirectly, this Agreement or its rights and obligations hereunder without the express written permission of the other party, not to be unreasonably withheld; provided, however, that both parties shall have the right to assign or otherwise transfer this Agreement to any parent, subsidiary, affiliated entity or pursuant to any merger, consolidation or reorganization, provided that all such assignees and transferees agree in writing to be bound by the terms of this Agreement prior to such assignment or transfer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

☞ ~ OR ~

- ☞ This paragraph DOES NOT ALLOW either party to transfer its rights to a successor company without prior approval.

7.13 **Non-Assignability & Binding Effect.** Except as otherwise provided for within this Agreement, neither party may assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written permission of the other. Any such assignment is deemed null and void.

- ☞ If any part of this Agreement is unenforceable or invalid, the balance of the Agreement should still be enforced. Basically, ignore any sections that are invalid.

7.14 **Severability.** If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted and the remaining provisions of this Agreement shall remain in full force and effect.

- ☞ The headings of the various sections are meant to explain or otherwise give meaning to those sections; they are for convenience only.

7.15 **Cumulative Rights.** Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative upon all other rights and remedies described in this section and allowed under applicable law.

7.16 **Headings.** The titles and headings of the various sections and sections in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this Agreement.

- ☞ Every copy shall be just as valid as the original.

7.17 **Counterparts.** This Agreement may be executed in multiple counterparts, any one of which will be considered an original, but all of which will constitute one and the same instrument.

🔊 Even after the termination of the Agreement, the parties may still have certain responsibilities such as keeping information confidential.

7.18 **Survival of Certain Provisions.** The warranties and the indemnification and confidentiality obligations set forth in the Agreement shall survive the termination of the Agreement by either party for any reason.

Understood, Agreed & Approved

We have carefully reviewed this contract and agree to and accept all of its terms and conditions. We are executing this Agreement as of the Effective Date above.

[Company]

[Reseller]



[Owner/Founder]

Vendor Name

Title

Title

Exhibit A

Company Products

- Xxx
- Xxx
- xxx



Exhibit B

Prices, Terms & Conditions

■	xxx	00.00
■	xxx	00.00
■	xxx	00.00



Exhibit C

Reselling Distribution Facilities

- XXX

