NON-EXCLUSIVE PURCHASING AGENCY AGREEMENT & GUIDE

Included:

Overview

Dos and Don'ts Checklist

Non-Exclusive Purchasing Agency Agreement Instructions

Sample Non-Exclusive Purchasing Agency Agreement

1. Overview

Purchasing agents are an important part of any company's success. Your purchasing force serves as the public face of your company, and the individuals and organizations that acquire goods on your behalf should be carefully selected. You must make sure you obtain high-quality products for a good price. You must explain to your representatives what goods they should be procuring and where they can find them. With the enclosed agreement, you can be sure that your representatives will get your products from the right people, in the right places, for the right price.

For a small company that's just starting out, an independent purchasing representative is often the best choice. Since they are often paid on a commission basis, there is no upfront investment of money and effort. They will be paid as the company is billed for the products it receives, and the two entities can build and grow together.

A good purchasing agency agreement outlines the rights and responsibilities of a company and the individuals and organizations that will procure its supplies. Vague, verbal agreements can lead to disputes and ill will. It's best for all parties to detail their respective roles in writing before making a first purchase. The merchandise you use in manufacturing and production serves as the foundation of your business. With the enclosed agreement, you can make sure the right representative is acquiring it on your behalf.

2. Dos & Don'ts Checklist

- [ ] A purchasing agent is a public representative of a company. The quality of a company's end product will reflect on an agent's reputation. Both parties should think carefully about these roles and responsibilities before signing the enclosed document.

- [ ] Allow each party to spend some time reviewing the agreement. This will reduce the likelihood, or at least the efficacy, of a claim that a party did not understand any terms or how those might affect the agreement as a whole.

- [ ] Review your state's laws governing independent contractors. In recent years, many states have made it more difficult for individuals to qualify as such, imposing absolute requirements about the freedom the contractor must have from company control. Certain provisions in the enclosed agreement may need to be strengthened or adapted to fit your state's rules.

- [ ] The enclosed document is a non-exclusive purchasing agency agreement. This means that the company is entitled to hire additional agents to purchase the same goods – perhaps even in the same geographical area. If you want to make sure that there will be only one purchasing agent for the company, you should not use this agreement.

- [ ] Before sitting down to sign, decide exactly what your goals are for the agreement. Will the protections guard your company's information? Is the commission percentage commensurate with the time and energy needed to purchase the goods? Take a moment to clarify the terms and conditions of your agreement before memorializing them in written form.

- [ ] Both parties should review the completed agreement carefully to ensure that **all relevant deal points** have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not stated expressly in the document.
- [ ] Sign two copies of the agreement, one for you and one for the other party.
- [ ] Keep your copy of the signed agreement for your records. At the end of its term, you and the other party can revisit its provisions and consider whether to renew.
- [ ] Depending on the nature of its terms, you may decide to have your agreement witnessed or notarized. This will limit later challenges to the validity of a party's signature.
- [ ] If your agreement is complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

3. Non-Exclusive Purchasing Agency Agreement Instructions

The following provision-by-provision instructions will help you understand the terms of your agreement.

The numbers below (e.g., Section 1, Section 2, etc.) correspond to the provisions in the agreement. Please review the document in its entirety before starting your step-by-step process.

- **Introduction.** Write in the date of the agreement, the name of each party, and an indication of each party's "type" (e.g., individual, corporation, partnership, LLC, etc.).
- **Recitals.** A report of each party's intent and ability to make the Purchasing Agent a representative of the Company.
- **Section 1: Purpose and Appointment.** Appoints the Purchasing Agent as a purchasing agent of the Company, and emphasizes that this is a "non-exclusive" appointment. This section also limits the Purchasing Agent's duties to certain territories and products. Attach a list of the kind of Merchandise to be purchased by the Purchasing Agent as Exhibit A to the Agreement.
- **Section 2: Confidential Information.** Provides both a definition of confidential information and a reminder of the Purchasing Agent's duty not to disclose that information.
- **Section 3: Nature of Relationship.** Explains that the Purchasing Agent is not an employee or partner of the Company. This is an important distinction for many reasons, including those relating to insurance coverage, legal liability, and taxes. This agreement seeks to emphasize this divide, but both parties should take care not to blur the line between independent contractor and employee. Review your state's laws governing independent contractors to make sure that the enclosed agreement follows local restrictions.
- **Section 4: Territory.** Delimits the geographical area in which the Purchasing Agent's acquisition efforts should be focused.

- **Section 5: Manufacturers, Suppliers, and Vendors.** Allows you to describe the types of manufacturers, suppliers, and vendors the Purchasing Agent should be seeking out. If you and the other party agree that the Purchasing Agent will not receive commissions on sales to current suppliers of Company merchandise, delete the brackets in the last paragraph and attach a list of those existing suppliers to the Agreement as Exhibit B.
- **Section 6: Title to Merchandise.** An explanation that the Company owns the Merchandise purchased by the Purchasing Agent on its behalf.
- **Section 7: Quality of Merchandise; No Warranties.** Details the Purchasing Agent's duty of inspection and outlines the Parties' duties if the Merchandise is defective. This section also indicates that the Purchasing Agent is not guaranteeing the quality of the Merchandise purchased.
- **Section 8: Compensation.**
  - (a) Write in the commission percentage that will apply to the purchases.
  - (b) Indicate the amount of time the Company has to forward commission payments to the Purchasing Agent. For many businesses, this will be about 60 days. Depending on the Company's procedures for accounts payable, you may want to allow for a longer or shorter time.
  - (c) Explains that the Company need not pay commissions on defective Merchandise.
  - (d) The circumstances under which no commission will be given.
  - (e) Emphasizes that the commission percentage is the Purchasing Agent's only compensation.
  - (f) Notes that the Purchasing Agent will pay for its own ordinary expenses. This is another reflection of the fact that the Company and the Purchasing Agent are functioning as separate entities.
  - (g) Indicates that the Purchasing Agent is responsible for paying its own taxes on the money it receives (i.e., it is not receiving a "salary" as an employee of the Company and the Company will not withhold those amounts).
- **Section 9: Billing.** An explanation of the manner in which the Purchasing Agent will be reimbursed for the items it acquires on the Company's behalf. Insert the number of days within which the Company must make this reimbursement.
- **Section 10: Purchasing Agent's Services.** Lists the Purchasing Agent's obligations under the agreement.
- **Section 11: Company's Representations and Warranties.** Details the Company's promises under the agreement.
- **Section 12: Conflicts of Interest.** The Purchasing Agent's promise that it is not currently (and will not be) representing any other company or product that competes with the Company or its merchandise. The Purchasing Agent also indicates that it will provide a list of its current products/clients and amend that list as it changes. The second part of this section indicates that the Purchasing Agent will not make purchases from companies in which it holds a financial interest.
- **Section 13: Term.** You and the other party to your agreement can indicate how long the initial term will be. It may be a good idea to make the initial term one year, with continuing one-year renewals. This allows both parties enough time to test the relationship, without locking either into a long-term deal.

- **Section 14: Termination.** Explains that certain actions or events will cause the agreement to end out of time, including written notice, material breach, or one party's entry into bankruptcy.
- **Section 15: Return of Property.** This is an extremely important provision, and although it may seem obvious to you that property should be returned after the end of the agreement, this paragraph serves to make that plain.
- **Section 16: Indemnification.** Protects each party from the financial consequences of the other's illegal or harmful conduct.
- **Section 17: Use of Trademarks.** States the Purchasing Agent will not use the Company's trademarks inappropriately or acquire a trademark of its own that is similar to the Company's. For example, an agent for XYZ products can not apply for a trademark on Sam's XYZ Products. It also notes that the Purchasing Agent may not continue to use the Company's trademarks after the agreement terminates.
- **Section 18: Assignment.** Explains that because the Purchasing Agent is serving in a 'personal' capacity in its representation of the Company, the Purchasing Agent cannot assign its interests and obligations under the agreement. However, if it obtains the prior written consent of the Purchasing Agent, the Company is entitled to assign its rights and obligations.
- **Section 19: Successors and Assigns.** States that the parties' rights and obligations will be passed on to successor organizations (if any), or organizations to which rights and obligations have been permissibly assigned.
- **Section 20: No Implied Waiver.** Explains that even if one party ignores or allows the other to break an obligation under the agreement, it does not mean that party waives future rights to require the other party to fulfill those obligations.
- **Section 21: Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Company and the Purchasing Agent.
- **Section 22: Governing Law.** Allows the parties to choose those laws that will be used to interpret the contract if there is ever a dispute. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Write in the state's law that you would like to govern the agreement (usually the state you reside or operate your business.)
- **Section 23: Counterparts / Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain. It says that even if the parties sign the agreement in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same agreement. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the agreement as a whole.
- **Section 24: Severability.** Protects the terms of the agreement as a whole, even if one part is later invalidated.
- **Section 25: Entire Agreement.** The parties' agreement that the agreement they're signing is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.

- **Section 26: Headings.** Notes that the headings at the beginning of each section are meant to organize the document, and should not be considered operational parts of the note.

Form Sample

NON-EXCLUSIVE PURCHASING AGENCY AGREEMENT

This non-exclusive purchasing agency agreement (the "Agreement") is made and effective as of __________ __, 20____ ("Effective Date") by and between _______________, [an individual] [corporation] [etc.] (the "Purchasing Agent") and _________________________, a ___________ [corporation][limited liability company] [etc.] (the "Company"). The Purchasing Agent and the Company may be referred to individually as a "Party" or collectively as the "Parties."

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RECITALS

WHEREAS, the Company is engaged in ________________ (as defined below and listed in Exhibit A to this Agreement); and

WHEREAS, the Company wishes to engage the Purchasing Agent as an independent purchaser of the Merchandise for the Company on the terms and conditions set forth below; and

WHEREAS, the Purchasing Agent wishes to acquire the Merchandise in accordance with the terms of this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering in
Agreement.

NOW THEREFORE, in considerati
promises and benefits conta