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SALES REPRESENTATIVE AND DISTRIBUTORSHIP CONTRACTS IN DELAWARE

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OVERVIEW OF DELAWARE

Delaware, centered on the eastern seaboard of the United States, between Delaware Bay and Chesapeake Bay, is approximately midway between Washington, D.C. to the south and New York City to the north. At the heart of the mid-Atlantic Region, Delaware is bordered on the north by Pennsylvania and the west and south by Maryland. To the east, Delaware is separated from New Jersey by the Delaware Bay. Within a three hundred and fifty-mile radius of central Delaware lies every major population center from Boston in the north to Raleigh, North Carolina in the south and Cleveland, Ohio in the west.

United States Interstate Highway 95 crosses Delaware southwest-to-northeast and six other U.S. Highways serve the state. There are three ferries that operate in Delaware and connect the state to its neighbors. Marine freight transport is served by the Port of Wilmington, the first inland port on the Delaware River. The port includes modern, economical off-loading, and storage facilities.

Amtrak has two stations in Delaware and Delaware's public transportation system (DART First State) was named "Most Outstanding Public Transportation System" in 2003 by the American Public Transportation Association.

Delaware's strong economy is led by the chemical, automotive and financial services industries. These industries are located most prominently in the industrialized and commercial northern portion of the state. In the southern two-thirds of Delaware, agriculture is a more vital part of the economy. The poultry, soybeans, dairy products, and corn contribute significantly to farm income. Delaware's economy generally outperforms the national economy of the United States.

CONDUCTING BUSINESS IN THE STATE OF DELAWARE

Delaware ranks second among the United States in civilian scientists and engineers as a percentage of the workforce as well as the number of patents issued to companies or individuals per one thousand workers. The per capita personal income in Delaware is ranked ninth in the nation and the average weekly wage is seventh in the nation. Since Delaware does not assess a state-level tax on personal property, it is an inviting jurisdiction for business and trade. Over 50% of United States publicly-traded corporations and 60% of Fortune 500 companies are incorporated in Delaware. Franchise taxes on Delaware corporations supply about one-fifth of the state revenue.

While foreign companies doing business in Delaware must comply with state law requiring registration with the Delaware Secretary of State, exceptions exist where the foreign company merely:

1. is in the mail order business accepting orders outside of Delaware and filling them with goods shipped to Delaware;

2. employs salespersons to solicit orders in Delaware, with all orders approved and all goods shipped from outside Delaware, and with no sales, repairs or replacements made from stock located in Delaware;
3. delivers equipment to locations in Delaware pursuant to a contract made outside Delaware, where installation of the equipment requires skilled supervision and such supervision is furnished pursuant to the contract;
4. is engaged in Delaware in business activities that are wholly interstate in character;
5. is an insurance company;
6. creates, as borrower or lender, or acquires evidences of debt, mortgages or liens on property; or
7. secures or collects debts or enforces any rights in property securing the same.

FREEDOM OF CONTRACT

Delaware law expressly allows the parties to an agreement the freedom to bargain for any terms to be included in the agreement without fear the court will subsequently rewrite the agreement. In essence, sales representative and distributorship contracts in Delaware will generally be enforced as written. *Knight v. Grinnage et al.* 1997 Del. Ch. LEXIS 133 (decided October 7, 1997) ("the parties who enter into a contract have the opportunity during the course of their negotiations to add to the contract any provision.

The information contained here is not intended to provide legal advice or opinion and should not be acted upon without consulting an attorney. Counsel should not be selected based on advertising materials, and we recommend that you conduct further investigation when seeking legal representation. – Albert J. Mezzanotte, Jr., Managing Partner

ABOUT THE FIRM

With capabilities backed by over 75 years of experience, Whiteford, Taylor & Preston has grown to over 155 attorneys, with offices in Maryland, Virginia, Delaware, and Washington, D.C. We maintain a range of practice groups to meet the needs of businesses and governmental entities and individuals, including corporate, litigation, employee benefits, real estate, international, government contracts, and bankruptcy. Our clients include businesses engaged in technology, finance, health care, insurance, transportation, communications, construction and real estate, securities, and manufacturing.

In 2007, *Legalease's Legal 500* ranked our Technology & Intellectual Property Group among the top 18 IP firms in the nation, our practice groups were again ranked in *Chambers USA* by Chambers & Partners, and our Bankruptcy group received national acclaim in the *Wall Street Journal*. Our firm and attorneys are listed in Legal Media Group/Euromoney PLC's *Benchmark Litigation*, *Law360 Litigation Almanac*, and Woodward White, Inc's *Best Lawyers in America*, among other publications.

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