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## Sample Employment Agreement

*If for some reason you do have to use an employment agreement that includes a termination-for-cause provision, at least put some thought into it (and have your lawyer do so, too.) Too many employers cut and paste boilerplate cause language into agreements, making it almost impossible to fire employees unless they commit crimes against humanity and are convicted by the World Court in The Hague. Here's a sample agreement I drafted for a client.*

### Solid Bases Employment Agreement

**Parties.** In this Agreement, the terms “you” and “your” refer to Patrick Sewall, and the terms “we,” “us,” and “our” refer to Solid Bases, LLC.

#### Background

- We are in the business of providing custom-engineered Aeroposts (“products”) to our customers.
- You are an individual.
- Both you and we wish to have you act as our Sales Support and Account Manager.

Therefore, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows.

### Terms and Conditions

#### I Your Basic Obligations

You will use your best efforts to support our sales force as directed by the General Manager and the Sales Manager. You will use your best efforts to solicit orders for the sale of products by representing the products in a clear and professional manner. You will make the solicitations and any resulting purchase orders using the procedures, prices, terms, and conditions that we specify from time to time. No sale or purchase order will be final until we approve it. Your job may require travel from time to time.

- I.1 Marketing Activities.** We will provide you with marketing materials and technical support to assist in your efforts to get sales. You may only use the marketing materials that we either provide you or approve in writing in advance. Examples of marketing materials include videos, brochures, computer presentations (e.g., PowerPoint shows), photographs, and documents, among others.

We are entitled to terminate this Agreement and void your commissions if you use unapproved marketing materials.

- 1.2 Other Manufacturers and Distributors.** While selling for us, you will not make any negative comments about any competing manufacturers or distributors or their products. Nor will you make any sale, or seek to make any sale, that is contingent upon the customer buying another company's products.
- 1.3 Pricing.** At the start of each month, we will give you the schedule of prices for that month. While we expect those prices to remain the same for that month, we reserve the right to change the prices if we decide it's appropriate. You will use the most recent pricing we give you unless we first give you written approval to use other prices. The pricing schedule may include discounted prices (or "floor prices") for larger-quantity sales. You may use your discretion to offer a price lower than the list price but not lower than the discount price for that quantity. If you wish to offer an even lower price, you must first obtain our written approval, which may be contingent on reducing or even eliminating your commission for that sale.
- 1.4 Delivery.** While we will try to deliver products as quickly as the customers need them, we will not be responsible for meeting delivery deadlines that you promise unless we first approve the deadlines in writing. Because delays in manufacturing and delivery are sometimes inevitable, you will avoid promising delivery deadlines without first consulting us.
- 1.5 Confidential Business Information and Trade Secrets.** You recognize that we have confidential business information and trade secrets ("our secrets"), and that to help you sell products we will from time to time share our secrets with you. You agree that sharing our secrets with others may give our competitors an unfair advantage over us. You also agree to maintain our secrets and not to share them with anyone during or after your engagement with us, unless we expressly authorize you in writing beforehand.
- 1.6 Professionalism.** You agree that while working on our behalf, you will conduct yourself in a professional manner and will maintain a professional appearance. At no time will you work on our behalf while impaired by alcohol or any drug.

## 2 Our Basic Obligations

While you are our Sales Support and Account Manager, we will compensate you as follows:

- 2.1 **Salary.** We will pay you a base salary at an annualized rate of \$50,000 a year.
- 2.2 **Commission.** In addition to your salary, we will also compensate you with a commission when we sell products to a customer. For any sale made to an existing customer while you are our Sales Support and Account Manager, we will pay you a commission of 2.5% of the value of the sale. An “existing customer” is any customer who is no longer a new customer, but who previously was a new customer to whom an independent sales representative made a sale. A “new customer” is any customer who has never purchased any product from us before, or who first became our customer in the previous 180 days. To qualify for commission under this paragraph, you must be actively involved in the maintenance of our relationship with the customer; it is not necessary for the sale to be the direct result of your personal marketing efforts. We will pay you the commission within 45 days of our receipt of the customer’s payment for that sale.
- 2.3 **Health Insurance.** We will not provide you with a group health-insurance plan, but we will reimburse you for all your individual or family health-insurance costs up to \$300 a month. This is not subject to the deferral described in paragraph 2.2.
- 2.4 **Vacation.** You are eligible to take two weeks’ vacation per calendar year, with 2005 being prorated based on your number of months worked. Because we believe it is important to take regular vacations to recharge your energies, you may not carry over vacation from one calendar year to the next, nor may you “cash in” vacation time for extra pay.
- 2.5 **Profit Sharing.** We will also compensate you with two percent of our profits while you are our Sales Support and Account Manager. We will distribute your share of profits under the Solid Bases Financial Operating Procedures (“the Procedures”) contained in the Addendum to our Operating Agreement. If there is any conflict between this paragraph and the Procedures, the Procedures take precedence. Please understand that the Procedures can be changed at any time without notice.

### 3 Term

The term of this Agreement will begin when the parties have signed it and will end when a party terminates it under paragraph 4.

### 4 Early Termination

- 4.1 By Us For Cause.** We may terminate this Agreement without notice if you take any action that is illegal or unethical or that reflects badly on us, or if you fail to follow our instructions. If we terminate this Agreement under this paragraph, we will only owe you whatever unpaid commissions remain from sales completed before the termination date, plus any deferred salary.
- 4.2 By Us Without Cause.** We may terminate this Agreement with 30 days' notice for any reason or no reason at all. If we terminate this Agreement under this paragraph, we will only owe you whatever unpaid commissions remain from sales that your team completed before the end of the 30-day notice period, plus any deferred salary. Additionally, we will pay you commissions on sales to existing customers under paragraph 2.2 for six months after the end of the notice period, and we will waive the "active involvement" requirement of that paragraph.
- 4.3 By You For Cause.** You may terminate this Agreement without notice if we cease doing business. You may also terminate this Agreement if we fail to pay you commissions after you have given us written notice of our failure to pay and 30 days to cure this failure. If you terminate this Agreement under this paragraph, we will only owe you whatever unpaid commissions remain from sales completed before the termination date, plus any deferred salary.
- 4.4 By You Without Cause.** You may terminate this Agreement with 30 days' notice for any reason or no reason at all. If you terminate this Agreement under this paragraph, we will only owe you whatever unpaid commissions remain from sales completed before the end of the 30-day notice period, plus any deferred salary.
- 4.5 Relocation.** If we move our headquarters far enough that it would add more than a hour to your average commute to the office, you may terminate this Agreement with 30 days' notice and receive three months' salary continuation as well as commissions on sales to existing customers under paragraph 2.2 for the next six months (and we will waive the "active involvement" requirement of that

paragraph). We will also pay you profit sharing under paragraph 2.5 for the next six months.

## **5 Assignment**

We may assign our duties or interests under this Agreement to any parent, affiliate, successor, or subsidiary that we may have. We must notify you in writing of any assignment within 30 days. You may not assign your duties or interests in this Agreement.

## **6 Nonsolicitation of Employees, Sales Representatives, and Customers**

- 6.1 Of Employees and Sales Representatives.** You agree that, during the term of this Agreement and for two years after, you will not solicit or take away, or attempt to solicit or take away, any of our employees or sales representatives, either for your own business or for any other person or entity, nor will you induce or encourage any employee or sales representative to sever his or her relationship with us. You also agree that during this period, you will not hire or assist in the hiring of, directly or indirectly, any employee or sales representative of ours.
- 6.2 Of Customers.** You agree that, during the term of this Agreement and for two years after, you will not solicit or take away, or attempt to solicit or take away, any of our customers, either for your own business or for any other person or entity, nor will you induce or encourage any customer to sever his, her, or its relationship with us. You also agree that during this period, you will not hire or assist in the hiring of, directly or indirectly, any employee or sales representative of ours. Further, you agree that even if you are solicited by a customer of ours to provide services to that customer or client, you will refuse to do so for two years following the termination of this Agreement.
- 6.3 Noncompetition.** During the term of this Agreement, you may not perform work or other services—directly or indirectly, whether for compensation or not—for a business that competes with us, nor may you solicit, encourage, or assist any of our employees or sales representatives to do so.

## **7 Miscellaneous Provisions**

- 7.1 Entire Agreement; Modification.** This Agreement contains all the terms and conditions agreed on by the parties. Any previous agreements between the parties are replaced by this Agreement.

This Agreement can be modified or changed only by a new written agreement signed by both parties.

- 7.2 Waiver.** A party's waiver of enforcement of any of this Agreement's terms or conditions will be effective only if in writing. A party's specific waiver will not constitute a waiver by that party of any earlier, concurrent, or later breach or default.
- 7.3 Severability.** If any part of this Agreement is held invalid or unenforceable, the rest of the Agreement will continue in full force.
- 7.4 Survival.** The covenants in paragraphs 1.5 and 6 will survive the expiration or termination of this Agreement.
- 7.5 Counterparts.** This Agreement may be executed in any number of counterparts, each of which is considered an original.
- 7.6 Choice of Law.** This Agreement is governed by and must be interpreted under Colorado law, without regard to its choice-of-law provisions.
- 7.7 Notices.** Notices provided for by this Agreement may be delivered in person, via a reputable express carrier, or by registered or certified mail (postage prepaid) to a party's address stated below. Notice sent by US mail is deemed delivered three days after deposit with the US Postal Service. Notice sent by a reputable express carrier is deemed received on the day receipted for by the party or its agent. Either party may change its address as listed below by giving written notice to the other party.
- 7.8 Headings.** All headings are for reference purposes only and must not affect the interpretation of this Agreement.

Dated: \_\_\_\_\_

Solid Bases, LLC, a Colorado limited-liability company  
(referred to as "we" throughout)

by Jesse James

\_\_\_\_\_  
Its General Manager and Principal

(signed) \_\_\_\_\_

Patrick Sewall (referred to as "you" throughout)

Address