

# **Independent Sales Contractor Agreement**

# APOLLOTEK INTERNATIONAL, INC.

## Independent Sales Contractor Agreement

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, by and between APOLLOTEK INTERNATIONAL, INC., hereinafter referred to as "Company" and \_\_\_\_\_, hereinafter will be referred to as "Contractor"

### RECITALS

**WHEREAS**, Company is in the business of financing, installing, and servicing water purification equipment.

**WHEREAS**, Company desires to engage the services of Contractor as an independent Contractor for the purpose of Installing and Servicing water conditioning equipment and accessories sold by Company on the terms and conditions set forth in this Agreement.

**WHEREAS**, both Company and Contractor desires to create a business relationship based on the above factors.

### NOW, THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. **Term.** The term of this Agreement shall be for a period of five years (5 years) commencing on the date of this Agreement and terminating at the end of the twelfth (12<sup>th</sup>) month thereafter; subject, however, to prior termination as hereinafter provided. It shall automatically renew thirty (30) days prior to the anniversary date. The compensation for any subsequent year shall be agreed by the parties.

2. **Service.** Contractor agrees to provide and remember reasonable and necessary as more particularly described in the Recitals of this Agreement Contractor shall devote Contractor's full energy and skill, and such amount of time as is necessary to properly promote sales of equipment and accessories sold by Company Contractor will not at any time do anything which may cause any loss or damage to Company in its business reputation, or otherwise Contractor will determine the method details and means of performing the foregoing services.

3. **Responsibility of Contractor.**

- (a) Contractor shall cooperate and conform with all merchandising advertising and sale promotion adopted from time to time by Company.

- (b) Contractor shall comply with all licensing requirements, laws, ordinances and regulations which may now or hereafter be applicable to Contractors activities or to the sale, use or installation of the equipment and accessories sold by Company.
- (c) Contractor shall have no authority to and shall not make any warranties in connection with Company's product on Company's behalf Contractor shall provide customers with the written warranties and other sales material furnished by Company for distribution to purchasers of Company's products, but Contractor shall not vary, alter or add such warranties.
- (d) Contractor shall not make any false representation concerning the Company's Product.
- (e) Contractor shall avoid all conduct and actions which might create or result in any fraudulent or other claims against Company or Contractor. At all times Contractors sales activity shall be conducted in a manner that reflects favorably upon the reputation of the Company and its products and that enhances the goodwill of the Company;
- (f) Contractor represents and warrants to Company that he/she has not taken any trade secret or confidential or proprietary information from any employer or other entity for which Contractor performed services for under a confidentiality agreement, that Contractor has not used and will not use any trade secret or confidential or proprietary information of any employer to solicit or acquire business for the Company or to perform his/her services for the Company. That he/she has not solicited or acquired any business for the Company while being employed by anyone else, and that Contractor is not violating and will not violate any agreement or obligation by entering into this Independent Contractor's Agreement with Company. The Contractor acknowledges that the Company is relying in these representations and warranties in entering into this Agreement.

4. **Records.** It is expressly understood that all records and files pertaining to the suppliers, customers and accounts of Company are the confidential property of the Company and shall not become the property of Contractor, and upon termination of this Agreement, Contractor shall return all such records, file and confidential information to Company.

5. **Proprietary Information of Company.** Contractor hereby acknowledges and agrees that Company owns certain trade secrets and other confidential and/or proprietary which constitute valuable property rights, which Company has developed through a substantial expenditure of time and money, which are and will continue to be utilized in Company's business and which are not generally known in the trade. This proprietary information expressly includes, but is not limited to, the names of the customers and suppliers of Company, past and prospective customer lists evidence by all prior, current and prospective accounts of Company, the identities of key personnel of the customers and the suppliers of the Company, and other particularized information concerning Company's products and customers. In recognition of these facts, Contractor hereby covenants,

represents and agrees that Contractor, both during and after the terms of this Agreement:

- (a) Will not discuss and will keep strictly secret and confidential all trade secrets and proprietary information of Company, including but not limited to, those items specifically mentioned above;
- (b) Will not, directly or indirectly, use or permit the use by any person of any said secrets or proprietary information until such trade secrets or proprietary or confidential information have become publicly available (otherwise than through a breach of this Agreement) and have no further value or potential for harm to Company.
- (c) Will not, directly or indirectly, either on Contractor's own behalf or on behalf of any other person or entity, solicit or attempt to solicit for employment, any person then employed by Company or any customer whose identity Contractor learned while performing services for Company
- (d) Will not duplicate any forms, orders, reports, brochures, sales literature, training literature, software or other computer programs, or any other documents utilized by Company in its business.

6. **Insurance.** Contractor agrees to carry and maintain during the term of this Agreement, at Contractors sole cost and expense, automobile public liability insurance with limits satisfactory to Company. Said policy is to insure against any and all liability of Contractor arising out of the operation of Contractors vehicle or any other vehicle operated by Contractor or anyone on Contractors behalf.

7. **Independent Status.** Contractor is aware of and understands that Contractor is an independent contractor as defined by California Labor Code Section 3353 and will not be an employee of Company for any purpose whatsoever. As an independent contractor, Contractor is not entitled to benefits under the California Workers Compensation Act. Nothing herein shall prohibit Company, at Company's sole discretion from including Contractor on Company's policy of Workers' Compensation insurance. Neither this Agreement, the relationship created between the parties under this Agreement, nor any course of dealing between the parties is intended to create or shall create an employment relationship, a joint venture, a partnership or any similar relationship. Contractor does not have nor shall Contractor hold out as having any right, power, authority to create any contract or obligation either express or implied on behalf of, in the name of, or binding upon Company or to pledge Company's credit or to extend credit in Company's name. Contractor shall pay all expenses and costs of operation of Contractors business including those incurred in connection with the solicitation of orders for Company's services.

8. **Relationship between the Parties.** Contractor is retained by Company only for the purpose and to the extent set forth in this Agreement. Contractor's relationship to Company during the period of this Agreement shall be that of an independent contractor. Contractor shall not be considered under the provision of this Agreement or otherwise to be entitled to participate in any other employees benefit plans, arrangements, or distributions by Company. Contractor shall hold Company harmless for all debts, liabilities, claims, and causes of actions and obligations incurred in the performance of Contractor's services hereunder.

- (a) **State and Federal Taxes.** Company will not withhold monies for any state, local or federal taxing authorities from compensation earned by Contractor pursuant to this Agreement. Company shall prepare and file a Form 1099 with the Internal Revenue Service (IRS) reporting the compensation paid to Contractor, if required to do so by law.
- (b) **Fringe Benefits.** Contractor and Contractors agents and employees shall receive no fringe benefits under this Agreement whatsoever, and accordingly, shall receive no insurance benefits, disability income, vacation, holiday pay, sick pay, expense reimbursement, or any other benefits intended for Company's employees.
- (c) **Licensing/Insurance.** Contractor shall obtain and maintain at Contractors sole expense any licenses or insurance required by federal, state, or local law.
- (d) **Non-Exclusivity of Services.** Contractor is free to pursue any and all outside activities and/or employment as Contractor desires, and Company acknowledges that Contractor will likely be involved in other business activities, contracting or/and employment.

**9. Pricing and Terms of Sale.**

- (a) Company shall have the right to establish prices, charges and other terms and conditions for the products sold by Company to customers. All orders will be at such prices and on such terms and conditions as Company may from time to time prescribe. No orders obtained shall bind Company unless accepted in writing by Company.
- (b) Contractor shall use the standard forms and documentations provided by Company in connection with all orders obtained by Contractor. Contractor shall have no authority to alter Company's standard forms or any of the terms of any standard forms provided to Contractor by Company without prior written consent of Company.
- (c) Immediately upon procuring a Sales Order Contractor shall forward to Company the original copy of each completed sales order contract and other required documentation obtained by Contractor. All sales orders shall be subject to acceptance or rejection by Company in its sole discretion at its executed offices located in the State of California.

**10. Termination.** Notwithstanding any other provision of this Agreement, this Agreement may be terminated upon the occurrence of any of the following events:

- (a) **Termination for Convenience:** Either party may terminate this Agreement for any reason or no reason whatsoever at any time upon thirty (30) days written notice to the other party.
- (b) **Termination for Cause:** This Agreement will be terminated immediately upon:
  - (i) The occurrence of a breach of, failure to perform or default under any of the terms, obligations, covenants, representations or warranties contained in this Agreement by either party hereto.
  - (ii) Contractors gross neglect of, or willful failure to perform, the duties and obligations hereunder or misconduct or fraud by

- Contractor.
- (iii) Upon the death of Contractor
- (iv) Upon the permanent mental or physical disability of Contractor which prevents Contractor from performing a majority of Contractor's services hereunder.
- (v) Upon the mutual written agreement by the parties.

11. **Breach of Agreement.** Contractor agrees that Company shall be entitled to pursue all available remedies at law or in equity for a breach of the covenants set forth in this Agreement, and agrees that Company will suffer irreparable injury by reason of any such breach. Contractor therefore agrees (and explicitly waives rights, if any, to contest) that Company shall be entitled (either with or without pursuing any other remedies) to equitable relief in the form of a temporary restraining order, and preliminary and permanent injunctions upon any actual or threatened breach of the covenants set forth in this Agreement.

12. **Cost of Training a New Contract.** Contractor acknowledges that the Company has expended or will expend substantial efforts and funds in training Contractor to perform Contractor to perform the work pursuant to this Agreement. For this reason, the Contractor agrees that should he/she directly or indirectly go to work with a competitor of the Company at any time within one (1) year within the date from this Assignment that he/she shall reimburse the Company for cost of such training. The parties estimate that \$5,000 is a reasonable and fair estimate of the cost of the training which Company has or will bestow on Contractor.

Initials: \_\_\_\_\_ (Contractor) \_\_\_\_\_ (Company)

13. **Notices.** All notices and other communications under this Agreement must be in writing and shall be deemed to have been duly given on the date of service if served personally on the party whom notice is to be given by first class mail, registered, certified, or overnight mail delivery, postage prepaid, and properly addressed as follows:

**To Company:** **APOLLOTEK INTERNATIONAL, INC.**

1702 McGaw Ave.

Irvine, CA 92614

**To Contractor:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

14. **Assignment.** This agreement shall inure to the benefit of: and be enforceable by Company and its successors and assigns; however this Agreement is personal to Contractor and may not be assigned by Contractor in whole or in part of including, but not limited to, by operation of law, by will or by the applicable law of descent and distribution except with the prior consent of Company, which consent may be withheld in Company's sole discretion.

15. **Amendment.** This Agreement may be amended at any time only by the written agreement of Contractor and Company.

16. **Counterparts.** This Agreement may be execute in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute and be one and the same instrument.

17. **General Statement.** The parties hereto agree that this written Agreement generally expresses the mode in which Contractor will perform services for Company, and it is expressly understood that this written Agreement supersedes all previous oral and written agreements between the parties.

18. **Arbitration.** – Except as otherwise expressly provided in this Agreement, any dispute or claim arising under or with respect to this Agreement will be resolved by Arbitration in Orange County, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in a court having jurisdiction thereof. Notwithstanding this arbitration provision, the Company will be entitled to injunctive and other equitable relief from the courts as provided in this Agreement and as the court may otherwise determine appropriate; and the Contractor agrees that it will not be a defense to any request for such relief that the Company has an adequate remedy at law.

19. **Attorneys' Fees.** Should any litigation or arbitration be commenced between Contractor and Company concerning this Agreement or the rights and duties of either in relation thereto, the party prevailing in such a litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for his attorneys' fees in such a litigation which shall be determined by the court in such a litigation or in a separate action brought for that purpose.

20. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California.

Executes at: \_\_\_\_\_, \_\_\_\_\_, on the date and year first above written.  
City State

## 21. NON-COMPETITION AND NON-SOLICITATION AGREEMENT.

(a) Contractor shall not immediately following the termination of Contractor's employment with Company, either directly or indirectly call on, solicit, or take away, or attempt to call on, solicit, or take away any of Company's (I) customer's on whom contractor called or with whom contractor became acquainted during contractor's employment with Company, or (II) any of Company's Employees, salespersons, or installers either on contractor's behalf or that of another person, firm, third party, or corporation.

(b) Remedy. Contractor acknowledges that a violation of Section 2 (a) of this Agreement by contractor may cause irreparable harm to the Company. Accordingly, contractor hereby grants the Company the right to seek and be granted injunctive relief for any such violation, in addition to any other legal remedies that may be available to the Company.

(c) No-compete clause. Contractor agrees that he will not compete with Company in a similar business for a period of 5 years from the date of this agreement. Contractor agrees to the no-compete clause in exchange for the consideration set forth in this agreement, as well as in consideration and the disclosure of confidential corporate information to the contractor by the Company.

## 22. CONFIDENTIAL INFORMATION AND TRADE SECRETS.

(a) Non-Disclosure. Except as specifically authorized by the Company in writing, from the date hereof and continuing forever, contractor agrees not to (I) disclose any Trade Secrets (as defined herein) to any individual or entity, or otherwise permit any person or entity to obtain or disclose an Trade Secrets, or (II) use any Trade Secrets for contractor's own financial gain, whether individually or on behalf of another individual or entity (whether or not such other individual or entity is any way employed by or affiliated with the Company). contractor, however, may disclose Trade Secrets if and only to the extent required by a valid order or subpoena issued by a court or administrative agency of competent jurisdiction.

(b) Trade Secrets. For purposes hereof, the term "Trade Secrets" means any confidential information of any kind, nature or description concerning any matter affecting or relating to the business of Company, including without limitation, the buying habits or practices of ay its consumers, its marketing methods and related data, the cost of materials or services, manufacturing and sales costs, lists or other written records used in Company's business or any other confidential information of, about or concerning Company's business.

(c.) Remedy. Contractor acknowledges the contractor will have access to and will BECOME familiar with or obtain Trade Secrets and that a violation of Section 2(a) by contractor may cause irreparable harm to the Company. Accordingly, contractor hereby grants the Company their right to seek and be granted injunctive relief for any such violation, in addition to any other legal remedies that may be available to the Company.

## 23. INDEMNITY

(a) Indemnity. Contractor hereby agrees to indemnify and hold Company free and harmless from and after the date of this Agreement for any loss, cost, liability or damages of any kind arising for any reason from contractor's actions or in actions in connection with contractor's performance of services for or on behalf of Company.

(b) Remedies. Contractor hereby grant the Company the right to off set or set off any amounts due contractor by Company, including without limitation, any commission or other payments due contractor in connection with contractor's performance of services for or on behalf of Company, in addition to any other legal remedies that may be available to the Company.

## 24. ASSIGNABILITY

No rights or obligations of contractor under this Agreement may be assigned or transferred by contractor. No rights of obligation of the Company under this Agreement may be assigned or transferred, except that such rights or obligations may be assigned or transferred by operation of law in the even of a merger or consolidation. The Company's rights and obligation hereunder may be assigned to one or more of the Company's affiliates.

## 25. CONFIDENTIALITY

Contractor will not disclose the terms of this Agreement except (i) to financial and legal advisor under and obligation to maintain confidentiality, or (ii) as required by a valid court order or subpoena (and confidentiality, or (ii) as required by a valid court order or subpoena (and in such event contractor will use contractor's best efforts to obtain a protective order requiring that all disclosure be kept under court seal) and will notify the Company promptly upon receipt of such order or subpoena.

## 26. MISCELLANEOUS

(a) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California without reference to laws governing conflicts of law.

(b) Entire Agreement. This Agreement contains all of the understanding and representations between the parties hereto pertaining to the subject matter hereof and supersedes all undertakings and agreements, whether oral or in writing, if any, previously entered into by them with respect thereto; provided however, contractor has or may execute an contractor agreement.

(c) Severability. In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions or portions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have excited, or have caused this Agreement to be executed by their duly authorized officer, as the case may be, all as of the day and year first above written, to be effective as provided above, if any.

**Contractor:**

Company Name:

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Company:**

Company Name:

APOLLOTEK INTERNATIONAL, INC.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_