



# NEMRA<sup>®</sup>



NATIONAL ELECTRICAL MANUFACTURERS  
REPRESENTATIVES ASSOCIATION

## ***NEMRA INSIGHTS – Guidelines for Negotiating Agreements***

***Published as a NEMRA Member Resource***

These advantages were developed with input from NEMRA and the Strategic Advisory Council for the benefit of association membership.

**Updated October 2023**

Company Name

**SALES REPRESENTATIVE AGREEMENT**

*This does not cover all possible situations and alternatives and is presented only as a sample Sales Rep agreement of the matters to be considered in negotiations. This should not be construed as a recommendation, as every relationship between a representative and a manufacturer differs and cannot be covered by a standard agreement. Each agreement should be individually negotiated and prepared, and an attorney should be consulted concerning negotiation issues and the formalization of an agreement.*

This Sales Representative Agreement (the "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_ by and between \_\_\_\_\_ a \_\_\_\_\_ corporation (the "Company"), and \_\_\_\_\_, a \_\_\_\_\_ (the "Sales Representative").

In consideration of the covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**1. Appointment of Sales Representative**

The Company hereby appoints the Sales Representative as its exclusive independent sales representative to solicit and promote the sales of the products described on Exhibit A attached hereto (the "Products") to customers and prospective customers in the territory described on Exhibit B attached hereto (the "Territory"). Except for sales of Products to those customers listed on Exhibit C attached hereto (the "House Accounts"), the Sales Representative shall at all times have the right to solicit and promote the sale of the Products to customers and prospective customers in the Territory, and at no time during the term of this Agreement shall the Company take any customer "in house" or otherwise limit the Sales Representative's right to solicit and promote the sale of the Products in the Territory or limit the Sales Representative's right to receive Commissions (as hereinafter defined) on account of sales of Products to customers in the Territory.

**2. Commissions & Compensation**

(a) The Company shall pay the Sales Representative commissions ("Commissions") on the Net Invoice Price (as defined below) actually received by the Company on account of Products sold or shipped to customers in the Territory in accordance with the Commission rates set forth on Exhibit D attached hereto. The term "Net Invoice Price" means the invoice price for Products less only separately stated costs for any trade discounts or allowances, freight, duties, taxes, and insurance.

(b) The Company shall pay the Sales Representative a split of commissions when engineering, execution of the order, or shipment involves different territories (i.e., 50% to the representative in whose territory the product is engineered or specifications are prepared; 25% to the representative into whose territory the product is shipped; and 25% to representative in whose territory the order is executed).

(c) All Commissions payable in accordance with Section 2(a) above shall be deemed earned upon the Company's acceptance of an order for Products and shall be paid not later than the 15<sup>th</sup> day of each month based upon amounts actually received by the Company during the

immediately preceding month. The Company may deduct from a payment of Commissions the amount of any Commissions paid by the Company to the Sales Representative (i) for Products which have been returned to the Company by a customer in the Territory, and (ii) for any credit given to a customer in the Territory with respect to any Products. The Company shall provide to the Sales Representative, not later than the 15<sup>th</sup> day of each month, an accounting of all amounts received by the Company for which the Sales Representative is due a Commission hereunder.

At the time of payment of commissions to Representative, Manufacturer will send Representative a Commission statement showing:

1. The computation of all Commissions earned during the (\_\_\_\_) \_\_\_\_\_-day period prior to its issuance (listing all invoices covered by the statement), and
2. A "Point of Sale" report with respect to all distribution sales of Products to the customers in the Territory,
3. A "Point of Transfer" report with respect to all transfers of Products by a distributor from such distributor's central warehouse to such distributor's local warehouse,
4. Commissions paid during that period (listing the invoices on which Commissions are being paid), and
5. The total of all Commissions due and owing to Representative.

There shall be deducted from any sums due Representative:

1. An amount equal to Commissions previously paid or credited on sales of Manufacturer's products which have since been returned by the customer or on allowances credited to the customer for any reason by the Manufacturer, and
2. An amount equivalent to Commissions previously paid or credited on sales which Manufacturer shall not have been fully paid by the customer, whether by reason of the customer's bankruptcy, insolvency, or any other reason which, in Manufacturer's judgement, renders the account uncollectible (if any sums are ever realized upon such uncollectible accounts, Manufacturer will pay Representative its percentage of Commission applicable at the time of the original sale upon the net proceeds of such collection).

*There are many different arrangements that can be worked out between a representative and a manufacturer. For example, if a representative is expected to develop a new market, he should consider requesting a higher commission rate than ordinarily paid by the manufacturer, or for some monetary subsidy or stipend during the period of time necessary to develop the market.*

*Refer to "Dollarize your Value" listed on Exhibit D for additional items that may be negotiated in a contract.*

### **3. Acceptance of Orders**

All orders are subject to acceptance or rejection by the Manufacturer at its home office and to the approval of the Manufacturer's credit department. Manufacturer shall be responsible for credit risks and collections.

If Manufacturer notifies customer of its acceptance or rejection of an Order, a copy of any written notification shall be transmitted to the Representative. At least once every month, Manufacturer

shall supply Representative with copies of all Orders received by the Manufacturer from customers in the Territory, and copies of all shipping notices, correspondence, and quotations made to the customers in the Territory.

#### **4. Duties of Sales Representative**

During the term of this Agreement, the Sales Representative shall:

- (a) Use commercially reasonable efforts to solicit orders for Products from customers and prospective customers in the Territory for acceptance by the Company;
- (b) Adhere to the sales policies of the Company from time to time communicated to the Sales Representative by the Company in writing;
- (c) Not make any representations, warranties, or commitments regarding the performance of the Products, except as authorized by the Company;
- (d) Utilize promotional programs provided to it by the Company;
- (e) Not solicit the sale of or sell products in the Territory which are competitive with the Products;
- (f) Pay all the costs of conducting its business, including, but not limited to, commission or other compensation to salespersons employed by Sales Representative;
- (g) Not use the Company's name in its corporate or trade name without the prior written consent of the Company; provided, however, that the Sales Representative may use the statement "authorized independent sales representative of the Company" in connection with its performance of this Agreement; and
- (h) Shall maintain the insurance coverages set forth on Exhibit E attached hereto.

#### **5. Relationship of the Parties**

Sales Representative is an independent contractor and not an agent, servant, or employee of the Company. Nothing in this Agreement shall be construed to constitute either party as the partner or employee of the other, it being intended that the Sales Representative is and shall remain an independent contractor solely responsible for its own actions.

#### **6. Authority of Sales Representative**

Sales Representative has no authority to accept, or otherwise enter into, any contracts or agreements on behalf of the Company. All contracts, agreements, or orders are subject to acceptance by the Company at the Company's absolute discretion.

#### **7. Duties of the Company**

During the term of this Agreement, the Company shall:

(a) Provide the Sales Representative with current sales policies, prices, warranty terms, and technical information;

(b) Furnish the Sales Representative, at no expense to the Sales Representative, Product samples and promotional and other literature for the promotion and sale of the Products; and

(c) Refer to the Sales Representative all inquiries from customers and prospective customers located within the Territory, and promptly furnish the Sales Representative with copies of all correspondence and documentation between the Company or any of its affiliates and such customers and prospective customers.

(d) Whenever Representative, at Manufacturer's request, takes possession of any Products for the purpose of delivering such Products to customers or for any other purpose, the risk of loss or damage to or destruction of such Products shall be borne by the Manufacturer, and Manufacturer shall indemnify and hold Representative harmless against any claims, debts, liabilities or causes of action resulting from any such loss, damage, or destruction.

#### **8. Term and Termination**

This Agreement shall commence on the date hereof and shall continue until the \_\_\_\_\_ (\_\_\_\_) anniversary of the date hereof, and thereafter shall automatically renew for successive one (1) year periods unless either party gives written notice to the other of its intent not to renew this Agreement not later than \_\_\_\_\_ (\_\_\_\_) days prior to the end of initial term or any renewal term. Notwithstanding the foregoing, this Agreement may be terminated by either party upon a material breach of this Agreement by the other party; provided that the party claiming such breach shall give the other party written notice thereof setting forth the alleged breach in reasonable detail, and the other party shall have \_\_\_\_\_ (\_\_\_\_) days from the date of its receipt of such notice to cure any alleged breach.

*The number of days required for written notice of termination should be negotiated. The Representative should also consider negotiating for a contract that will not permit cancellation for one (1) year (or more) unless there is a mutual agreement to terminate, there is bankruptcy involving one of the parties, or the business of one of the parties is discontinued.*

#### **9. Payments of Commissions Upon Termination**

Unless this Agreement is terminated by the Company as a result of Sales Representative's material breach hereof, which breach is not timely cured, then notwithstanding such termination, Sales Representative shall be entitled to receive Commissions in accordance with this Agreement for all orders for Products received by the Company from customers in the Territory during the remaining portion of the then current term of this Agreement and for a period of \_\_\_\_\_ (\_\_\_\_) months following the end of such remaining term of this Agreement, notwithstanding the date such orders are accepted or the Products are shipped. Upon the termination of this Agreement as a result of Sales Representative's material breach hereof, which breach is not timely cured, then Sales Representative shall be entitled to receive Commissions on all orders for Products received by the Company from customers in the Territory dated on or prior to the effective date of such termination, notwithstanding the date such orders are accepted, or the Products are shipped.

*(The following are examples of severance arrangements which may be negotiated. If representative has been involved in substantial market developments, he should consider an arrangement which provides for more substantial severance payments.)*

<b>Number of Consecutive Years as a Representative for the Manufacturer</b>	<b>Number of Monthly Severance Payments</b>
More than 2 years but less than 4 years	1
More than 4 years but less than 6 years	2
More than 6 years but less than 8 years	3
More than 8 years but less than 10 years	4
More than 10 years but less than 12 years	5
More than 12 years but less than 14 years	6
More than 14 years but less than 16 years	7
More than 16 years but less than 18 years	8
More than 18 years but less than 20 years	9
More than 20 years but less than 22 years	10
More than 22 years but less than 24 years	11
More than 24 years but less than 26 years	12

#### **10. Indemnifications**

(a) The Company is solely responsible for the design, development, supply, production and performance of the Products and the protection of its patents, trademarks and trade names, and other intellectual property. The Company shall indemnify, defend, and hold Sales Representative harmless from and against, and shall pay all losses, costs, damages, or expenses whatsoever, including, without limitation, reasonable attorneys' fees and costs, which Sales Representative may sustain or incur on account of (i) any breach by the Company of any of its obligations under this Agreement; (ii) any infringement by any Products of patents, trademarks, trade names, or other intellectual property of any third party, (iii) any breach of warranty in any way resulting from the sale of Products, (iv) any injury or death to any person or damage to any property or both caused by any Products, and (v) the failure of any Products to comply with any applicable statute, law, rule, regulation, or order. The Company shall also include Sales Representative as an additional insured on its product liability insurance policy. This section shall survive the termination of this Agreement.

(b) The Sales Representative shall indemnify, defend, and hold the Company harmless from and against, and shall pay all third-party losses, costs, damages, or expenses whatsoever, including, without limitation, reasonable attorneys' fees, and costs, which the Company may sustain or incur on account of any breach by the Sales Representative of any of its obligations under this Agreement. This section shall survive the termination of this Agreement.

#### **11. Non-Solicitation**

The Company shall not, directly or indirectly, during the term of this Agreement and for a period of \_\_\_\_\_(\_\_\_\_) months following the termination of this Agreement, solicit, hire, retain or otherwise engage or go into business with any individual who is or was employed or

retained by the Sales Representative at any time during the \_\_\_\_\_(\_\_\_\_) month period prior to the date on which the Company solicits, hires, retains, or otherwise engages such person for the purpose of soliciting or promoting the sale of Products in the Territory.

#### 12. Waiver

A waiver by either party of any breach of this Agreement by the other party shall not operate as a waiver of successive breaches, and a party's failure to insist upon strict performance hereunder in any one or more instances shall not be deemed a continuing waiver of any rights of such party.

#### 13. Notices

Any notice to be given hereunder shall be in writing and shall be sent by certified mail or overnight courier, as follows:

- (i) If to the Company:  
[NAME]  
[TITLE]  
[ADDRESS]  
[CITY, STATE, ZIP]
- (ii) If to Sales Representative:  
[NAME]  
[ADDRESS]  
[CITY, STATE, ZIP]  
[ATTN: \_\_\_\_\_]

or to any other address by written notice in accordance with this provision. Any notice given hereunder shall be effective upon delivery or refusal of delivery.

#### 14. Entire Agreement

This Agreement constitutes the entire understanding of the parties pertaining to the subject matter hereof and shall be construed in accordance with the laws of the State of \_\_\_\_\_. The headings contained in the Agreement are inserted only as a matter of convenience and shall not in any way effect the operation or interpretation of the Agreement.

#### 15. Non-Assignment

This Agreement may not be assigned by either party without prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, and their permitted assigns.

#### 16. Severability

In case any one or more of the items or provisions in this Agreement should be declared by a court, arbitrator, or governmental agency or department to be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining terms and provisions contained herein shall not in any way be affected or impaired thereby.

**17. Attorneys' Fees**

In the event of any litigation between the parties arising from or relating to this Agreement, the prevailing party in such litigation shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and costs arising from or related to such litigation.

**18. Counterparts; Electronic Delivery**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A counterpart of this Agreement executed and delivered by facsimile or electronic mail shall be equally as effective as delivery of a manually executed counterpart of this Agreement.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

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IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized representative as of the day and year first written above.

**[THE COMPANY]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[SALES REPRESENTATIVE]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A  
TERRITORY**

The Representative's Territory shall consist of the following: \_\_\_\_\_

*The territory can be designated as specific states, counties, cities, or in any other way which clearly delineates the area. If the territory is not a specific area, and is limited to only specific customers, the customers should be named. If there are any customers or "house accounts" to be excluded from the territory, they should be clearly listed by name and location.*

**EXHIBIT B  
PRODUCTS**

The products of the Manufacturer applicable to this agreement are: \_\_\_\_\_

*The agreement should cover all products and services of the manufacturer unless the representative is to handle only specific products or services. If the representative is not handling all the products or services, the agreement should list the product lines, products, or services the rep is handling. It is preferable not to list products by model or catalog numbers as these may change from time to time. The agreement should also indicate if new products or services developed or added by the manufacturer are to be included.*

EXHIBIT C  
HOUSE ACCOUNTS

The House accounts are: \_\_\_\_\_

**EXHIBIT D  
COMMISSION RATES / DOLLARIZE YOUR VALUE**

Operational	Sales/Marketing	Legal
<input type="checkbox"/> Order Entry	<input type="checkbox"/> Agency Support	<input type="checkbox"/> Contract
<input type="checkbox"/> Warehousing	<ul style="list-style-type: none"> <li>○ Market Support</li> </ul>	<ul style="list-style-type: none"> <li>○ Non-compete (state specific)</li> </ul>
<input type="checkbox"/> Technology	<ul style="list-style-type: none"> <li>▪ Co-funding employee/vertical</li> </ul>	<ul style="list-style-type: none"> <li>○ Terms</li> </ul>
<ul style="list-style-type: none"> <li>▪ ERP Interference/CRM</li> </ul>	<ul style="list-style-type: none"> <li>○ National account support</li> </ul>	<ul style="list-style-type: none"> <li>○ Exclude "paid when paid"</li> </ul>
<input type="checkbox"/> Customer Service	<ul style="list-style-type: none"> <li>○ Spec support</li> </ul>	<ul style="list-style-type: none"> <li>○ Identify hidden fees/costs</li> </ul>
<input type="checkbox"/> Pricing	<ul style="list-style-type: none"> <li>▪ Fee per spec</li> </ul>	<ul style="list-style-type: none"> <li>○ Severance terms</li> </ul>
<input type="checkbox"/> Technology Systems	<ul style="list-style-type: none"> <li>○ Growth initiative</li> </ul>	<ul style="list-style-type: none"> <li>○ Spec credit/destination credit/ bill to on engineered products</li> </ul>
	<input type="checkbox"/> Channel Credit	<ul style="list-style-type: none"> <li>○ House accounts</li> </ul>
	<ul style="list-style-type: none"> <li>○ MDF</li> </ul>	
	<ul style="list-style-type: none"> <li>○ POS</li> </ul>	

**EXHIBIT E**  
**INSURANCE REQUIREMENTS**

**Comprehensive General Liability:**

**Auto Liability:**

**Workers' Compensation/Employers' Liability:**

**Umbrella/Excess Liability:**

**Property Insurance (for products held at Agent Warehouse or Outside Processor):**

**All policies shall name:**

The Company as an **Additional Insured** on all policies except workers' compensation and employers' liability and provide a **Waiver of Subrogation** on all policies as respects to work performed or services provided that may be part of this Agreement.

The Company listed as Certificate of Insurance holder and mailed to:

[THE COMPANY]  
[ADDRESS]  
[CITY, STATE, ZIP]  
[ATTN: \_\_\_\_\_]

Provide **30 Days' notice of Cancellation** on all policies listed on Certificate of Insurance.