



NATIONAL ELECTRICAL MANUFACTURERS  
REPRESENTATIVES ASSOCIATION

***GUIDELINES***  
***For Preparing Employment***  
***Agreements***

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

## 2 NEMRA Guidelines for Preparing Employment Agreements

### Introduction

It is sound business practice to always have written agreements with your sales personnel. A written agreement however must deal with all possible matters of controversy, so that in the event of a dispute, the written “word” can save a lot of time and money. The following check list is offered as a helpful guide of factors that should be included in your contracts with sales personnel. This is applicable whether the agreement is with an employee, or with an independent contractor serving as a sales agent.

- 1) **State the specific product(s) to be covered by the agreement.** Also state what sales aids, training, or other assistance of any kind will be supplied to the individual to produce income.
- 2) **That the parties to the contract agree to adhere at all times to the established policies, rates and practices of the principal company for whom sales are being solicited.** Also specify that the company’s normal accounting methods for all calculations will be binding.
- 3) **A detailed description of the territory to be covered by the salesman.** Include your right to change territory and/or reassign accounts.
- 4) **Specify the method of compensation.** It will generally be one that includes a) straight salary; b) straight commission or c) a combination that involves quota, guaranteed draw, overrides, etc. In this section of the agreement, there should also be a written policy for handling bad debt write-offs; frequency of commission payments; whether payment is based on a collection of billing basis; and the handling of any commission overdrafts.
  - a) **Straight Salary:** Generally pretty routine, but it may be wise to include a provision that allows you to switch to another method of compensation after a certain period.
  - b) **Straight Commission:** State the method of computation that will be the company’s normal and accepted method of accounting. Commission is usually computed on net income after a deduction of such factors as cash discount, draw, and other factors listed above.
  - c) **Combinations:** of (a) and (b) must be outlined clearly. Besides some of the factors mentioned above, include amount of salary or “guaranteed” draw; percent of commission and over-ride; when and how commissions are to be paid; and, when they are subject to revision and review.
- 5) **Sales orders received from accounts located within the territory, for accounts located outside the territory, or vice versa, shall be deemed:**
  - a) “split accounts” upon which compensation would be computed at so much % to each salesman;
  - b) assigned credit to the salesman on the basis of where the buying source or entity is located.
- 6) **Specify conditions under which the contract can be terminated.** The salesman, depending on the method of compensation, receives whatever salary, and/or commission they have earned to termination date. This includes business that has been billed up to the point of termination, plus business that has been accepted for subsequent delivery.
- 7) **Specify the term of the agreement.**
- 8) **Include statement regarding expenses** (whether or not you will pay for them). You also should include a clear statement as to authority on extraordinary expenses. Usually a salesman may not incur any debt, obligation or liability of any kind in the name of, or for, or on the account of the principal, unless specifically authorized to do so.

### 3 NEMRA Guidelines for Preparing Employment Agreements

#### 9) Other points to be considered:

- a) Include a statement that details the administrative responsibilities the salesman will have (call reports, attendance at meetings, etc.).
- b) Consider the following additional agreements or statements to be signed by the salesman. These should be prepared or reviewed by an attorney, and can be extremely important.
  - 1) A **Non-Compete Agreement** that will protect your business from the harmful effects that disclosure of information to competition would cause.
  - 2) A **Code of Conduct** that will ensure the fact that the salesman will abide by the Company's policies with regard to legal and ethical standards.
  - 3) An **Information Agreement** that will ensure that trade secrets, research, technical data and other proprietary and confidential information are held in trust.

Finally, remember that all contracts and agreements should be reviewed at least once a year. It is also a good idea to have a brief synopsis of each written agreement that gives an overview of the key provisions, significant dates, etc.

#### Guidelines\* for preparing employment agreements

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, by and between \_\_\_\_\_, a corporation incorporated under the laws of the State of \_\_\_\_\_, (hereinafter referred to as Employer), and \_\_\_\_\_ who lives at \_\_\_\_\_ in the City of \_\_\_\_\_ and the State of \_\_\_\_\_ (hereinafter referred to as Employee), as follows:

**1. TERM:** In consideration of the agreement of the Employer to employ the Employee for a term of one year from the date hereof and continuing until \_\_\_\_\_, unless terminated or extended, the Employee hereby accepts employment upon the terms and conditions hereinafter set forth. The Employee shall hereafter receive training in the nature of the Employer's business.

**2. COMPENSATION:** (Following is a typical provision covering salary and incentive compensation:)  
"While this Agreement is in force, Employee will be compensated on the following basis:

- a) A regular salary of \$\_\_\_\_\_ per month, to be paid in a lump sum, or in two (2) installments each month, as the parties may from time to time determine, and
- b) Incentive compensation equal to \_\_\_\_\_% of "net commissions" received by Employer from its principals as a result of sales to customers in Employee's territory.)

(If Employee is not to receive a salary and commission, or if commission is to be paid only on certain accounts, this provision should be modified accordingly.)

(If a split commission arrangement is to be included, the following is a typical provision:

"However, whenever Employer received commissions as a result of sales to customers in Employee's territory which are shipped into another Employee's territory, or as a result of sales to customers in another Employee's territory which are shipped to customers in Employee's territory, Employer shall have the right to determine if Employee is to be paid any incentive compensation on such transactions and how much.")

## 4 NEMRA Guidelines for Preparing Employment Agreements

- c) "Net commissions" shall mean commissions which Employer actually receives from its principals, less any charge-backs made or allowances granted by Employer's principals or by Employer.
- d) Incentive compensation (less withholding taxes, Social Security, and other deductions authorized by Employee) will be paid to Employee on or before the \_\_\_\_\_ day of the calendar month following the month in which the commissions were paid to Employer, and Employer will submit to Employee explanatory statements at the time of payment of incentive compensation.

**3. EXPENSES:** (There are many different arrangements between Employers and their Employees. The following are typical provisions – the first provides for the reimbursement of expenses, and the second provides that the Employee shall be responsible for his or her expenses:)

- a) "Employer shall reimburse Employee for reasonable expenses incurred by the Employee in connection with Employer's business, provided that Employee submits to Employer within \_\_\_\_\_ days after the end of each calendar month such expense report as may be required by Employer, together with such supporting documentation as may be acceptable to Employer."
- b) "Employee shall pay all expenses of his activities whatsoever, including travel and entertainment, but will, upon request of Employer, submit a statement and substantiation of such expense to Employer for review."

**4. AUTOMOBILE:** (There are many different arrangements involving the use of an automobile by an Employee. A typical provision requiring the Employee to use his own automobile, is as follows:)

"Employee will use his own automobile in performing his duties pursuant to this Agreement, carry liability insurance with limits and coverage satisfactory to Employer, cause Employer to be named as an additional insured in such insurance policy, and deposit with Employer the original or a duplicate original of such policy."

In some instances, Employer will pay for collision and liability insurance on the Employee's automobile and/or other expenses of operating the vehicle.

In some instances, Employer will provide an automobile for the Employee to use and, if so, the provision covering the use of the automobile should clearly define who will be responsible for maintenance, repair, insurance, and any other expenses involved in the operation of the automobile, and should also provide that the automobile will be returned to the Employer upon request of the Employer.

**5. TERRITORY:** The Employee shall be assigned to, and shall work in Employer's territory which shall consist of \_\_\_\_\_. The Employee shall not be responsible for this entire area but shall be assigned and reassigned from time to time to a portion of said area in order to accomplish the aims and requirements of the Employer's business.

**6. DUTIES:** The Employer is engaged as a sales agent of the Employer. The Employee shall devote his entire time, attention and energies to the business of the Employer and shall provide such reports on his activities as the employer may from time to time request. The Employee shall not during the term of this agreement be engaged in any other business activity whether or not such business activity is pursued for gain, profit or other pecuniary advantages; but this shall not be construed as preventing the Employee from investing his assets in such form or manner as will not require any services on the part of the Employee in the operation of the affairs of companies of which such investments are made; provided, however, that such investments shall not be made with a direct competitor of the Employer.

## 5 NEMRA Guidelines for Preparing Employment Agreements

**7. ACCEPTANCE OF ORDERS AND TERMS OF SALE:** Employee will sell only at prices and upon terms of sale authorized by Employer and by its principals, and the right is reserved by Employer and its principals from time to time to change, alter or amend prices and other terms and conditions of sale. All orders obtained by Employee are subject to acceptance or rejection by Employer's principals at their home offices and to the approval of their credit departments. Employee is not authorized to contract on behalf of Employer, or any of its principals, or to make any collection of funds.

**8. EMPLOYEE BENEFITS:** If Employer provides Employee benefits, the following is a typical provision covering some of the possible benefits:

"During the period this Agreement is in effect, Employer shall make available to Employee at Employer's expense:

- a) \$\_\_\_\_\_ of group life insurance, with a provision for double indemnity in the event of accidental death;
- b) After Employee has been employed for more than \_\_\_\_\_ days, the salary continuation plan of Employer as it may be in effect from time to time;
- c) Such hospital and medical insurance as may be provided through Employer's group insurance plan in effect from time to time;
- d) \_\_\_\_\_ week(s) of vacation (with pay) after Employee has completed his first year of employment with Employer, and one (1) additional week for every \_\_\_\_\_ full year(s) (after the first year) Employee is in Employer's employ (up to a maximum of \_\_\_\_\_ weeks)."

**9. RESTRICTIONS:** The Employee recognizes and acknowledges the business methods, customers and accounts of the Employer as they may exist from time to time, as a valuable, special and unique asset of the Employer's business. The Employee acknowledges that this information would be of value to any competitor of the Employer and agrees that during the term of his employment or within a period of eighteen (18) months following the termination of his employment, whether with or without causes, as hereinafter set forth, the Employee shall not disclose or make known the business methods, customer lists or addresses of customers, territories, accounts or his knowledge of his Employer's requirements and/or source of supply of the Employer to any other person, firm, corporation or association or other entity for any reason or purpose whatsoever. The Employee further covenants and agrees that he shall not within \_\_\_\_\_

(boundaries outlined)

compete against the Employer by engaging in a similar line of business by ownership, management, operation, control or employment, and will not directly or indirectly solicit business from any of the Employer's customers located in any territory to which the Employee is assigned during the course of his employment or from any of the Employer's customers otherwise known to the Employee. In the event of a breach or threatened breach by the Employee of the provisions of this paragraph, the Employer shall be entitled to an injunction restraining the Employee from disclosing in whole or in part the Employer's business methods, customers, accounts supply or requirements or from rendering any services to any person, firm, corporation, association or other entity to whom such information in whole or in part has been disclosed or is threatened to be disclosed or to restrain the Employee from competing against the Employer or soliciting from any customer located in any territory serviced by the Employer during the course of the Employee's employment. Nothing herein shall be construed as prohibiting the Employer from pursuing any other remedies available to the Employer for such breach or threatened breach.

## 6 NEMRA Guidelines for Preparing Employment Agreements

**10. DISABILITY:** If the Employee is unable to perform his services by reason of illness or incapacity for a period of sixty (60) continuous days or in the aggregate for a period of ninety (90) days in any single year, the Employer may with five (5) days written notice to said Employee, terminate the employment and thereupon the Employer shall be obligated to pay Employee only such compensation as is due up to and including the day of the giving of such notice of termination; provided, however, that the terms and provisions of paragraph nine (9) above shall continue and the Employee shall be bound by such obligation for a period of eighteen (18) months following termination of employment.

**11. TERMINATION:** Without cause, the Employer may terminate the employment at any time by giving thirty (30) days written notice to the Employee. In such event, the Employee, if requested by the Employer, shall continue to render services and be paid his regular compensation up to the date of termination and in addition there shall be paid to the Employee on the date of termination a severance allowance equal to an additional thirty (30) days compensation. Without cause, the Employee may terminate his employment upon written notice to the Employer, but the Employee shall receive compensation only to the date of said termination. Notwithstanding such termination without cause, the Employee shall be bound by the obligations prescribed in paragraph nine (9) herein, for a period of eighteen (18) months following termination of employment.

**12. OBLIGATIONS UNDER TERMINATION:** (The following are typical provisions)

"In the event of termination of this Agreement for any reason whatsoever:

- a) Employee will, prior to the effective date of termination, furnish Employer with a list of every customer and prospective customer in his territory, and every project upon which he has been working, the list to include company name, name of project engineer, buyer, and principal and product involved;
- b) Employee will actively work on closing all orders and report to Employer on all transactions and calls up to the effective date of termination;
- c) Employee will, prior to the effective date of termination, return to Employer all demonstration equipment, samples, literature, catalogs, correspondence, credit cards, and all other property belonging to Employer, in good condition and repair, ordinary wear and tear excepted.

**13. TERMINATION UPON SALE OF BUSINESS:** Notwithstanding anything herein contained to the contrary, the Employer may terminate this agreement upon ten (10) days written notice to the Employee upon happening of any of the following events: (a) the sale by the Employer of substantially all of its assets to a single purchaser or group of purchasers; (b) the sale, exchange or other disposition, in one transaction, of 2/3 of the outstanding corporate shares of the Employer; (c) a bona fide decision by the Employer to terminate his business and liquidate his assets; or (d) the merger or consolidation of the Employer in a transaction in which the shareholders of the Employer receive less than 50% of the outstanding shares of a newer continuing corporation.

**14. WAIVER OF MINIMUM WAGE REQUIREMENT:** It is expected that the Employee will work an irregular number of hours per week and that his hours may often exceed forty (40) hours per week. The Employee shall work in a capacity or combination of capacities and for guaranteed minimum monthly earnings which the parties agree shall exempt the Employee from the overtime pay provisions of the Fair Labor Standards Act, commonly known as the Wage-Hour Law. The Employee agrees that in consideration of payment of the commission herein provided, rather than a fixed hourly rate with time and one-half pay for all hours in excess of forty (40) hours per week, in the event it should be ruled the Employee is not exempt from the overtime pay provisions of the Fair Labor Standards Act.



## 7 NEMRA Guidelines for Preparing Employment Agreements

**15. CANCELLATION:** Notwithstanding anything herein contained to the contrary, this agreement shall not be construed to prevent the Employer from terminating the employment of the Employee at anytime because of his fraud, misappropriation, embezzlement, or any malfeasance and the Employee shall continue to be bound by the obligations prescribed in paragraph nine (9) herein.

**16. CHOICE OF LAW:** This agreement shall be deemed to have been made in the State of \_\_\_\_\_, regardless of the order in which the signatures of the parties shall be affixed hereto and shall be interpreted and the rights and liabilities of the parties, whether with respect to contract formation or contract performance, determined in accordance with the laws of the State of \_\_\_\_\_.

**17. ENTIRE AGREEMENT:** This instrument contains the entire agreement of the parties. It may not be changed orally, modified or terminated except by further written agreement.

**18. NOTICE:** Any notices required to be given in writing pursuant to the terms of this agreement shall be sufficient and effective if mailed by registered or certified mail, return receipt requested, addressed to:

The Employer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Employee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**19. BREACH:** In the event of breach of this agreement, or any part thereof, the Employer shall have the option of injunction as set forth, the right of termination of this agreement and damages or any other remedy by law provided.

**20. AUTOMATIC RENEWAL:** The term of employment set forth herein in paragraph one (1) shall be deemed automatically extended for successive periods of one (1) year each upon the same terms and conditions contained herein, unless at least thirty (30) days prior to expiration of the then current term, either party shall give written notice to the other of intention not to review such employment.

**21. DISPUTES AND ARBITRATION:** The parties agree that any disputes or questions arising hereunder, including the construction or application of this Agreement, shall be settled by arbitration in accordance with the rules of the American Arbitration Association then in force. If the parties cannot agree upon an arbitrator within ten (10) days after demand by either of them, either or both parties may request the American Arbitration Association to name a panel of five (5) arbitrators. The Employer shall strike the names of two (2) on this list; the Employee shall then strike two (2) names, and the remaining name shall be the arbitrator. The decision of the arbitrator shall be final and binding upon the parties, both as to law and to fact, and shall not be appealable to any court in any jurisdiction. The expenses of the arbitrator shall be shared equally by the parties, unless the arbitrator determines that the expenses shall be otherwise assessed.

## 8 NEMRA Guidelines for Preparing Employment Agreements

**IN WITNESS WHEREOF**, the parties hereto have caused this agreement to be executed effective as of the day and year first above written, in multiple counterparts each of which shall be considered an original.

By \_\_\_\_\_  
(President)

ATTEST

(Seal) \_\_\_\_\_  
(Employee)

\*The format and considerations do not cover all possible situations and alternatives, and is presented only as a guide to point out some of the matters to be considered in negotiations. This should not be construed as recommendations, as every employment relationship 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 problems and the formalization of an agreement.