



NATIONAL ELECTRICAL MANUFACTURERS
REPRESENTATIVES ASSOCIATION

***NEMRA GUIDELINES
for Negotiating an Agreement to
Warehouse Consigned Stock***

Published as a NEMRA Member Resource

NEMRA Guidelines for Negotiating an Agreement to Warehouse Consigned Stock between a Manufacturer and an Independent Representative.

THIS AGREEMENT made this _____ day of _____, 20____ by and between _____, a corporation incorporated under the laws of the State of _____ having its principal office at _____ hereinafter referred to as "Manufacturer" and/or "you, your", and _____ a corporation incorporated under the laws of the State of _____ having its principal office at _____ hereinafter referred to as "Representative" and/or "we, us" as follows:

This agreement is for the warehousing and shipment of products* on consignment basis by _____ (Manufacturer).

It is not a sales representation agreement and it is separate and exclusive from any such agreement.

(* Products shall be deemed to include any and all products received by us on your behalf.)

Warehouse refers to our facilities located at _____ (Street), _____ (City), _____ (State), _____ (Zip).

Manufacturer will ship to us, from time to time, _____ products on "consignment." You will properly mark and pack all consigned products for shipment and pay the cost to deliver those products to us.

Upon delivery we are to visually inspect each shipment and note any damage on the carrier's receipt. We are not responsible for any damage in transit if we promptly inform _____ (Manufacturer) of the damage and promptly forward a signed inspection report describing the damage, or evidence of waiver if the carrier waives inspection.

After inspection, the consigned stock is to be stored _____ (Specify location, indoors or outdoors), at our above referenced location in an area clearly marked to identify the consigned products as belonging to _____ (Manufacturer). If state law requires that you file a statement of consignment, our signature is required on that statement. These procedures are required to protect your property against claims of any of our creditors by informing such creditors that the consigned stock is not owned by us. We must keep these products free from any lien, security interest or encumbrance.

When a buyer is located and if you decide to sell from stock consigned to us, you will notify us to ship specific products to the buyer. We then must remove the products from storage and arrange for delivery to the buyer. You shall pay the cost of shipment. Title to all consigned products shall remain with _____ (Manufacturer) until the products have been placed on carriers for shipment to the buyer.

Note: these are FOB shipping point terms. They should be changed as necessary, i.e. FOB Destination: title would not transfer until delivered to customer.

We are to confirm each shipment daily by written, telephone, or electronic communication. After the end of each month, you will total the purchase price of all sales to buyers from the products consigned to us and pay us a warehousing fee at our then published rate, which currently is _____. *This should be completed with the fee agreed upon. There are many different arrangements that can be negotiated, such as a flat fee per cubic foot per month, a percentage of sales from consigned inventory, etc.*

You may inspect your consigned products during our regular business hours. Upon your request, we are to complete an actual physical inventory of your consigned products and to report the results on forms you will supply. You may witness the inventory and review our records relating to your consigned products. Adjustments will be made using the current published distribution price. If we are required to take more than two inventories annually, you will pay the cost of all additional inventories. We shall store and handle your consigned products with due care and diligence, but you shall be responsible for damage or loss of consigned products arising from acts of God, acts of Government, inadequate packaging or other cause beyond our control. Your insurance company, if any, will waive the right of subrogation in regard to your consigned stock. The risk of loss or damage to or destruction of such products shall be borne by you and you shall indemnify and hold representative harmless against any claims, debts, liabilities or causes of action resulting from any such loss, damage or destruction.

You will file all returns and pay all taxes resulting from this storage arrangement provided we promptly communicate to _____ (Manufacturer) all governmental notices. You shall be solely responsible for the design, development, supply, production and performance of your products and the protection of your trade names. You agree to indemnify and hold us harmless from and against and to pay all losses, costs, damages or expenses whatsoever, including reasonable attorney's fees, which we may sustain or incur on account of infringement or alleged infringement of patents, trademarks, or trade names, or breach of warranty or claimed breach of warranty in any way resulting from the sale of your products. You will indemnify us from and hold us harmless from and against all liabilities, losses, damages, costs or expenses, including reasonable attorney's fees, which we may at any time suffer, incur, or be required to pay by reason of injury or death to any person or damage to property or both caused or allegedly caused by any products sold by _____ (Manufacturer).

This warehouse arrangement may be terminated by either of us upon 30 days advance written notice. Upon termination, you may come on to our property to remove all your products consigned to us. Prior to removal, however, any and all financial obligations and/or indebtedness to us must be paid in full. Upon termination, removal will be at your expense. If you do not supervise or inventory the final removal, or if you direct us to ship the inventory to another location, we shall conduct a final inventory which shall be binding. We shall have no further responsibility for the inventory once it leaves our premises. No waiver of any provision in this arrangement shall operate to waive future occurrences. Any modification of this storage arrangement must be in writing and signed by both of us. However, from time to time, we will announce procedures to implement the above storage arrangement, which do not require your signature. We may amend such procedures with 10 days advance notice.

This agreement contains the entire understanding of the parties, shall supersede any other oral or written agreements, and shall be binding upon, or inure to the benefit of the parties' successors assigns. It may not be modified in any way without the written consent of both parties. We shall not have the right to assign this agreement in whole or in part without your written consent.

- a) This agreement shall be construed and enforced according to the laws of the State of _____ (Warehouse location) regardless of where it is entered into or performed.

- b) 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, and that the arbitration hearings shall be held in the city in which the principal office of the party requesting arbitration (with the American Arbitration Association) is located. If the parties cannot agree upon an arbitrator within ten (10) days after the demand by either of them, either or both parties may request the American Arbitration Association to name a panel of five (5) arbitrators. The Manufacturer shall strike the names of two (2) on this list, the Representative 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.

IN WITNESS WHEREOF, the parties have executed this agreement this _____ day of _____, 20____, written in multiple counterparts, each of which shall be considered an original.

MANUFACTURER: _____

By: _____

Title: _____

REPRESENTATIVE: _____

By: _____

Title: _____