



# TERMS AND CONDITIONS OF SALE AND CREDIT

Nello Corporation  
211 W. Washington St.  
Suite 2000  
South Bend, IN 46601

Phone: (574) 288-3632  
Fax: (574) 288-5860

**Buyer:** \_\_\_\_\_  
Ship to Address: \_\_\_\_\_  
Bill to Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Tax ID #: \_\_\_\_\_ D&B DUNS#: \_\_\_\_\_  
Years in Business: \_\_\_\_\_ Number of Employees: \_\_\_\_\_ Annual Sales: \_\_\_\_\_  
Check One:  Corporation  LLC  Partnership  Limited Partnership  Proprietorship  
Accounts Payable Contact: \_\_\_\_\_ Tax Exempt? \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**Bank Name:** \_\_\_\_\_ Account #: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**Trade Reference:** \_\_\_\_\_ Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Account #: \_\_\_\_\_

**Trade Reference:** \_\_\_\_\_ Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Account #: \_\_\_\_\_

**Trade Reference:** \_\_\_\_\_ Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Account #: \_\_\_\_\_

THE ABOVE INFORMATION is provided for the purpose of obtaining credit by Buyer from Seller and is warranted to be true and correct. Buyer hereby authorizes Nello Corporation (hereinafter "Seller") and its representatives and successors to contact the persons above identified and such other persons as Seller deems necessary to obtain credit and financial information concerning Buyer. Buyer further authorizes all persons contacted by Seller for the purposes of determining Buyer's credit worthiness to disclose to Seller any credit and financial information concerning Buyer possessed by such person. All sales of Product (*defined on the reverse side hereof*) by Seller to Buyer, whether on credit or otherwise, shall be subject to the terms and conditions set forth herein and on the reverse side hereof.

## SEE THE REVERSE SIDE FOR ADDITIONAL TERMS OF AGREEMENT.

The person executing this agreement on behalf Buyer represents and warrants that he or she is lawfully entitled so to do and that execution hereof by the undersigned will bind Buyer to the terms hereof.

Signature of Owner or Officer: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

To induce Seller to agree to extend credit to Buyer or to otherwise sell Products to Buyer, the undersigned guarantor (hereinafter "Guarantor") hereby absolutely unconditionally guarantees payment of all sums owed by Buyer to Seller. Notice of acceptance of this guarantee, of non-payment, of nonperformance or the amount of indebtedness outstanding at any time, of protest, demand, or other remedy is expressly waived. The liability of Guarantor shall not be affected by any extension, modification, indulgence, compromise, settlement or variation of any term hereof or by the discharge or release of the obligation of the Buyer. Guarantor agrees to be bound to each and every term contained herein and on the reverse side hereof as if Guarantor and Buyer were the same person and further agrees to pay all costs of collection against Guarantor, including attorney fees, without relief from valuation and appraisal laws.

Signature of Guarantor: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_

## Terms and Conditions of Sales and Credit

1. Sales: Seller agrees to sell to Buyer such products and services as Seller may determine to sell, deal in, and provide in the ordinary course of its business subject to the terms set forth in this Agreement (hereinafter "Products"). Such sales shall be exclusively for Buyer's business use. Buyer represents and warrants that no purchase hereunder will be made for the personal, family or household use of Buyer. This Agreement is not intended to require Buyer to purchase any products or services from Seller nor is it intended to require Seller to: a. maintain or continue to maintain an inventory of any particular type of product; b. deal in or continue to deal in any particular type of product; or c. provide or continue to provide any particular type of service. Seller may refuse to sell Products to Buyer at any time without cause or prior notice.

2. Pricing: Price quotations and terms shall remain in effect for thirty (30) days from date of issuance. Seller reserves the right to change published pricing at any time.

3. Credit Limits: Credit limits shall be determined and modified at the sole discretion of the Seller. In the event that Buyer is delinquent in payment or has exceeded the credit limit established by Seller, Seller may refuse to sell Products to Buyer, suspend any shipment or delivery or refuse to manufacture any Products or provide any services until the indebtedness of Buyer to Seller has been reduced, or all past due amounts, including finance charges, have been paid in full, as Seller determines necessary.

4. Taxes: Purchaser is responsible for all sales, use and similar taxes unless Seller agrees in writing to pay the same.

5. Payment Terms: Buyer shall pay sums owed Seller within thirty (30) calendar days of the date of Seller's invoice. Buyer further agrees that the purchase price shall be increased for any purchase for which payment in full has not been timely made, such increase to be interest on the unpaid balance due of each such invoice equal to the lesser of the maximum rate of interest permitted by law or two percent (2%) per month. Buyer agrees to pay, in addition, all costs of collection, including attorney fees, court costs, and other expenses incurred by Seller to enforce the terms of the Agreement. Seller does not hereby agree to payment after the due date and may demand payment in full any time. Buyer waives all claims for relief under valuation and appraisal laws.

6. Buyer's Agents: Buyer agrees to have only individuals who are authorized agents of Buyer execute documents on Buyer's behalf for purchases or deliveries. Buyer agrees that any person in Buyer's employ may accept or acknowledge delivery of products or services to Buyer.

7. Buyer's Inspection: Buyer or its designated representative shall inspect all Products within seven (7) calendar days after delivery of Products (hereinafter "Inspection Period") and Buyer shall notify Seller of any defects, shortages, overshipments, or nonconformance in any of the Products within the Inspection Period. Any Products not rejected by Buyer within the Inspection Period shall be deemed to have been accepted by Buyer.

8. Shipping Terms: Shipping terms for shipments within the United States are F.O.B. Seller's Point of Shipment. Shipping terms for international shipments are EXW Seller's Point of Shipment (Incoterms 2000). In the event that Buyer specifies in writing the shipping carrier, type of service, and payment method (collectively hereinafter "Mode of Shipment"), freight costs shall be charged in a manner consistent with Buyer's specification. In the event that Buyer has not specified a Mode of Shipment in writing, at the sole discretion of Seller, such charges may be prepaid by Seller and added to Seller's invoice to Buyer. All claims for transportation damage shall be filed and processed by the Buyer. Buyer agrees to pay for all Products purchased without regard to whether the same are damaged during shipment.

9. Title and Risk of Loss: Title to and risk of loss and damage to the Products shall pass to Buyer immediately upon delivery of the Products to a common carrier, or to an employee or other agent of Buyer, at Seller's facility.

10. Warranty: Seller warrants that the Products will conform to the description contained on the invoice therefor and (b) will be free from defects in material and workmanship, under normal use and service when correctly installed and maintained for a period of two (2) years from tender of delivery. Seller shall not be deemed or held to be obligated or accountable upon or under any warranties or guarantees expressed, or implied, statutory, by operation of law, or otherwise, in any manner or form, beyond the foregoing express warranty. Seller's liability under any warranty is limited solely to replacing, repairing or issuing credit for Products subject to warranty, as Seller shall elect. In the event any Products is determined to be defective during the warranty period, Buyer shall (i) notify Seller promptly in writing of any warranty claim, and (ii) provide Seller with an opportunity to inspect and test Products claimed to be defective. In no event shall Seller be liable for any defective products if examination discloses that the defective condition of such products was caused by the design or other criteria supplied by Buyer to Seller or was caused by misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or negligence in use, improper temperature, humidity or other environmental condition, storage, transportation or handling. Seller makes no other warranty either expressed or implied with respect to any Products.

11. Manufacturer's Warranties: Some of the Products are manufactured by others and warranties by some manufacturers of the Products provide remedies greater than those provided hereunder by Seller. Buyer agrees to make no claim against Seller under the manufacturer's warranty or to make any claim against Seller except under the warranties hereunder provided. Seller shall not be liable for any damages for breach of any warranty other than those damages expressly agreed to by Seller.

12. Patents and Copyrights: No representation is made that the products or their use or sale do not infringe any patents, trademarks or trade names or other rights of third parties.

13. Buyer's Indemnity: Buyer agrees to indemnify and hold Seller harmless for any claim, damage, loss or other expense paid by or claimed against Seller and all costs of defending the same (including, without limiting the generality of the foregoing, the fees of attorneys, expert witnesses and investigators and travel expenses) arising, in whole or in part, from through or in any manner related to Products manufactured by Seller at Buyer's specific request pursuant to Buyer's design or other criteria ("Custom Products"), except when such claim arises exclusively as a result of Seller's negligence or breach of Seller's warranty above set forth.

14. Cancellation: All requests for cancellation or changes to an order for Products must be submitted in writing by Buyer. In the event that Buyer cancels or changes an order for Products, Buyer agrees to pay a restocking fee of not

less than 35% for standard Products and 100% for Custom Products of the cost of the Products to which such cancellation or change is applicable.

15. No products may be returned to Seller without Seller's prior consent. All requests by Buyer for authorization to return Products must be submitted in writing to Seller utilizing Seller's Return Request Form. Seller may, at its sole discretion, issue Buyer written authorization to return Product to Seller (hereinafter "Return Authorization") for inspection and refund. All shipping costs for the return of Products are the responsibility of the Buyer. In the event that, upon inspection, Seller determines that the Products are subject to the terms of Seller's warranty Seller shall waive any restocking fees and shall issue a credit to Buyer for any shipping costs for the shipment of warranted Products back to Seller. Seller shall have no obligation to consider return requests received later than ninety (90) calendar days after shipment of Products to Buyer.

16. Seller's Inspection: Upon receipt of Products returned for warranty claims or pursuant to a Return Authorization, Seller shall inspect the Products and, at its sole discretion, accept or deny the return of such Products. In the event that Seller accepts the return of Products from Buyer pursuant to a Return Authorization, Seller shall issue a credit to Buyer in the amount of the original invoice amount for the Products less a restocking charge of not less than 35% for standard Products and 100% for Custom Products. In the event that Seller denies the return of Products from Buyer, Seller shall ship Products back to Buyer at Buyer's sole expense.

17. Force Majeure: Seller shall not be liable for failure to perform any of its obligations under this Agreement to the extent such failure is caused by fire; flood; explosion; war; riot; embargo; labor disputes; compliance with any laws, regulations, orders, acts or requirements from the government, civil or military authorities; acts of God or the public enemy; or any act or event of any nature beyond Seller's reasonable control. In no event shall Seller be liable to Buyer for any special, incidental or consequential damages as a result of delay in performance or failure to perform hereunder.

18. Conflict of Forms: In the event of conflict between this Agreement and the terms printed on the face or reverse side of Buyer's order form, the terms and conditions of this Agreement shall control. If this Agreement is silent as to a particular matter, the terms which appear on the reverse side of Seller's invoice shall control, and Seller's acceptance is conditional upon Buyer's assent to the terms which appear on the reverse side of Seller's invoice. This agreement may be modified by either separate written modification hereof or by the addition of terms in Seller's invoice.

19. Notices: A notice to Buyer or Seller shall be valid if it is in writing and if delivered via any method, public or private, which requires the recipient to acknowledge delivery of the notice. If failure to send a notice before the end of a time period waives a right, the notice is effective when sent. All other notices are effective upon receipt unless recipient refuses delivery. If delivery is refused, the notice is effective when sent.

20. Limitations on Time and Damages: Any claim that either Seller or Buyer may have against the other shall be barred if demand therefor is not made within 180 days of the date of the occurrence of the event giving rise thereto and a demand for arbitration is not made within 180 days of the date of the aforementioned demand. Notwithstanding the foregoing, the limitation on time provided in this paragraph shall not apply to the recovery by Seller of any sum owed by Buyer to Seller. Neither party shall be liable for special, incidental, indirect or consequential damages, including, without limiting the generality of the foregoing, lost profits, whether or not caused by breach of warranty or resulting from negligence or any other cause. In the event that a defective Product causes damages or injuries to the Product, to Buyer's business, to the end-user's business, to other equipment, to a factory or place of business, or to employees or other persons, Seller's liability to Buyer shall be limited (except as provided by law) to the remedies provided above under paragraph 10 if the warranty period described in such paragraph 10 has not expired. If such warranty period has expired, Seller shall not be liable for such damages or injuries, provided, however, that if a court of competent jurisdiction shall find as a matter of law that any clause of this paragraph is unlawful, it is agreed that Seller's liability shall be limited solely to a U.S. dollar amount equal to the cost of the defective Product to Buyer. The remedies provided in this paragraph shall be exclusive and shall be Buyer's sole remedies.

21. Governing Law: This Agreement shall be construed under and in accordance with the laws of the State of Indiana except for those principals of conflicts of law which may have the effect rejecting venue as consented to hereinafter.

22. WAIVER OF JURY TRIAL: BUYER AND SELLER HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THEY OR EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

23. CONSENT TO VENUE: ALL LITIGATION BETWEEN THE PARTIES SHALL BE COMMENCED AND MAINTAINED IN EITHER THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA OR ANY INDIANA STATE COURT SITTING IN ST. JOSEPH COUNTY, INDIANA. BUYER AND SELLER CONSENT TO VENUE IN AND TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA AND TO VENUE IN AND TO THE JURISDICTION OF ANY INDIANA STATE COURT SITTING IN ST. JOSEPH COUNTY, INDIANA FOR ALL LITIGATION WHICH MAY BE BROUGHT TO ENFORCE A JUDGEMENT OF THE ARBITRATION PANEL PURSUANT TO SECTION 24 OR FOR ANY OTHER PURPOSE ARISING FROM, THROUGH OR IN ANY MANNER RELATED TO THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF BUYER AND SELLER HEREUNDER. NOTWITHSTANDING THE FOREGOING, EACH PARTY SHALL HAVE THE RIGHT TO BRING AN ACTION TO ENFORCE A JUDGMENT OR THE AWARD OF ARBITRATORS IN ANY COURT HAVING JURISDICTION OVER THE PARTY OR THE PROPERTY OF THE PARTY AGAINST WHOM SUCH AWARD OR JUDGMENT WAS ENTERED. THIS PROVISION IS NOT A WAIVER OF THE REQUIREMENT OF ARBITRATION.

24. Arbitration: Any dispute between Buyer and Seller shall be settled by binding arbitration in accordance with the Rules of the American Arbitration Association ("AAA"). The expedited rules of the AAA shall apply and judgment upon the decision of the arbitrators may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in St. Joseph County, Indiana. Any arbitration award must be accompanied by a written statement of the arbitrator giving an explanation as to the basis for the determination of the award. Each Party shall pay one-half (½) of the charge for the arbitrators and one-half (½) of any other charge imposed by AAA. Notwithstanding the foregoing, Seller may, but need not, submit to arbitration any action to collect any sum owed by Buyer to Seller. In the event Seller elects to seek a judgment against Buyer or other relief as provided herein without arbitration, Buyer agrees that any counter-claim against Seller shall be, nonetheless, submitted to arbitration.

**Seller makes no warranties, expressed or implied, except as otherwise specifically herein provided. No implied warranty of merchantability is made; and, no warranty of fitness is made. Seller shall have no obligation to Buyer for special, incidental, indirect or consequential damages of any kind, including lost profits.**