



N E L L O

TERMS AND CONDITIONS OF SALE AND CREDIT

NELLO
1201 S Sheridan St
South Bend, IN 46619
Phone: (574) 288-3632
Fax: (574) 288-5860

Buyer: _____
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 NELLO (*hereinafter "Seller"*) and is warranted to be true and correct. Buyer hereby authorizes Seller and its representatives and successors to contact the persons above identified and such other persons as Seller deems desirable 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. "*Agreement*" refers to the contract consisting of this document and the additional terms and conditions identified below. All sales by Seller to Buyer, whether on credit or otherwise, shall be subject to this Agreement.

ADDITIONAL TERMS AND CONDITIONS PUBLISHED ON SELLER'S WEBSITE AT WWW.NELLOINC.COM/CONTACT/ ON THE DATE SHOWN NEXT TO THE SIGNATURE FOR BUYER ARE INCORPORATED INTO THIS AGREEMENT AND MADE A PART HEREOF. BUYER ACKNOWLEDGES RECEIVING SUCH ADDITIONAL TERMS AND CONDITIONS, INCLUDING LIMITATIONS AND DISCLAIMERS OF SELLER'S LIABILITIES.

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: _____

GUARANTY: To induce Seller to extend credit to Buyer or to otherwise sell goods and provide services to Buyer, the undersigned (*hereinafter "Guarantor"*) hereby absolutely unconditionally guarantees payment of all sums owed by Buyer to Seller. Notice of acceptance of this guarantee, of nonpayment, 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 of any agreement between Buyer and Seller or by the discharge or release of the obligation of the Buyer. Guarantor agrees to be bound to each and every term contained in the Terms and Conditions of Sale and Credit between Buyer and Seller 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: _____

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- 1. Sales:** Seller agrees to sell goods and provide services to Buyer 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. 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 goods or services from Seller nor is it intended to require Seller to: 1) maintain or continue to maintain an inventory of any particular type of goods; 2) deal in or continue to deal in any particular type of goods; or 3) provide or continue to provide any particular type of service. Seller may refuse to sell goods or provide services to Buyer at any time without cause or prior notice.
- 2. Pricing:** Price quotations and terms shall remain in effect for the period specified in the quote. If a quote does not limit the time that it remains effective, the quote shall remain in effect for fifteen (15) days from date of issuance. Seller reserves the right to change published pricing at any time without notice.
- 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 take any action with regard to the indebtedness of Buyer to Seller and Buyer's pending purchases of goods or services as Seller deems appropriate, including without limiting the generality of the foregoing, withholding shipment of goods and other deliverables for which payment has not been made.
- 4. Taxes:** Buyer is responsible for all sales, use and similar taxes unless Seller agrees in writing to pay the same.
- 5. Payment Terms and Interest:** Buyer shall pay for all goods and services purchased from Seller at such time as Seller may require in writing. If Seller does not specify other terms, goods purchased from Seller shall be paid for at or before the time the same are shipped. If Seller does not specify other terms for services, Buyer shall pay for services on or before the date any deliverables created in conjunction with such services are shipped or within thirty (30) calendar days of the date of Seller's invoice for the same, whichever first occurs. Buyer further agrees that the purchase price shall be increased for any goods and services for which payment is not made when due, such increase to be interest beginning on the day after the date payment is due on the amount past due at the lesser of the maximum rate of interest permitted by law or twenty-four percent (24%) per annum. 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 this Agreement. Seller does not hereby agree to payment after the date the same is due. If Buyer fails to pay any sum on or before the date the same is due, Seller may demand payment in full of all sums due and owing any time thereafter. Buyer waives all claims for relief under valuation and appraisal laws.
- 6. Checks and Payments:** Checks or payments, whether full or partial, received from or for the account of Buyer, regardless of writings, legends, or notations upon such checks or payments or regardless of other writings, statements, or documents, shall be applied by Seller against any amount owing by Buyer with full reservation of all Seller's rights without an accord and satisfaction of Buyer's liability.
- 7. Bill and Hold:** Buyer agrees to accept delivery on the agreed delivery date. If Buyer requests that delivery be delayed and Seller agrees to delay the delivery date, Buyer agrees that the transaction will be on a "bill and hold" basis. In accepting the bill and hold transaction, Buyer agrees that: 1) goods purchased shall be held by Seller free of any liability to Buyer for destruction of or damage to the same while in the custody of Seller or its designee; 2) payment shall be made at the time required by the applicable invoice and shall not be delayed by the change in delivery; 3) goods purchased by Buyer which are in the possession of Seller or its designee pursuant to this paragraph may not be claimed by Buyer as a set off against any sum Buyer owes Seller and any such claim shall be of no force or effect; and, 4) title to the goods shall pass to Buyer when Seller receives payment for the same or when title passes under the applicable shipping terms, which ever first occurs.
- 8. Buyer's Agents:** Buyer agrees to have only individuals who are authorized agents of Buyer execute documents on Buyer's behalf in dealings with Seller. Buyer shall be bound to the terms of any document executed by any person in its employ unless, within ten (10) days of execution, Buyer gives Seller notice that the person signing such document did not possess the authority to execute the same on behalf of Buyer. Notwithstanding the foregoing in this paragraph, Buyer agrees that any person in Buyer's employ may accept or acknowledge delivery of goods or services to Buyer.
- 9. Buyer's Inspection:** Buyer or its representative shall inspect all goods within seven (7) calendar days after delivery of the same (*hereinafter "Inspection Period"*) and Buyer shall notify Seller of any defects, shortages, excess quantities, or nonconformance in any of the goods within the Inspection Period. Any goods not rejected by Buyer within the Inspection Period shall be deemed to have been accepted by Buyer. Buyer agrees that the length of the Inspection Period is reasonable and if Buyer is unable to complete an inspection within the time provided by this paragraph, Buyer will so notify Seller at the time Buyer agrees to purchase the goods from the Seller.
- 10. Shipping Terms:** All charges for shipping and costs incidental thereto shall be paid by Buyer. Terms for shipments within the United States are F.O.B. Seller's point of shipment. Terms for international shipments are EXW Seller's point of shipment (Incoterms 2010). In the event Buyer specifies in writing the carrier and other terms and features of the manner of shipping, including insurance (*collectively hereinafter "Mode of Shipment"*), Seller will use reasonable efforts to comply with Buyer's instructions and shipping charges will be billed accordingly. At the sole discretion of Seller, shipping charges may be prepaid by Seller and added to Seller's invoice to Buyer. Seller shall have no liability to Buyer for any reason whatsoever for damage to Buyer's property during shipment. All claims for damage during shipment shall be filed and processed by Buyer and Buyer agrees that such claims shall be filed exclusively against the carrier and not against Seller. If Seller selects the carrier, Seller shall have no obligation to insure the goods during shipment. Buyer further agrees to pay for all goods purchased without regard to whether the same is damaged during shipment.

11. Title and Risk of Loss: Except as provided in paragraph 7, title to and risk of loss and damage to goods shipped by Seller to Buyer shall pass to Buyer as required under the applicable shipping terms, or if delivered at Seller's facility to an employee or other agent of Buyer, at the time of delivery to the employee or agent of Buyer. Title to and risk of loss and damage to goods being returned to Seller shall not pass to Seller until Seller accepts tender of the goods after the goods are in the possession of Seller at its place of business.

12. Warranty of Goods Manufactured by Seller: Seller warrants that goods manufactured by Seller will conform to the description contained on Seller's invoice therefor and 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 MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT. SELLER DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE. SELLER SHALL HAVE NO OBLIGATION TO BUYER FOR PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOST PROFITS.** Seller shall not be deemed or held to be obligated or accountable upon or under any warranties or guaranties expressed, implied, statutory, by operation of law, or otherwise, in any manner or form, beyond the express warranty set forth in this paragraph.

13. Warranty of Goods Manufactured by Others: The warranty set forth in the immediately preceding paragraph does not apply to goods sold or delivered by Seller but manufactured by others. Goods manufactured by others are sold **"AS IS"** without warranty of any kind by Seller. Buyer agrees to accept and hereby accepts the warranties of the manufacturer of such goods, if any, as the exclusive warranty for such goods. Buyer agrees to make no claim against Seller for breach of warranty of goods manufactured by persons other than Seller.

14. Buyer's Remedies: Buyer's exclusive remedy for breach of warranty or other nonconformity shall be the repair or replacement of such goods, as Seller elects, or, if Seller elects, Seller shall give Buyer credit for the price paid by Buyer for the same. Claims of nonconformity are subject to Seller's right, as provided in paragraph 15, to inspect the goods to determine the validity of the claim. Seller shall have no obligation to pay or reimburse Buyer for any expense related to the removal of goods for which a breach of warranty or other non-conformity is claimed or for the installation of repaired or replacement goods. Seller shall have the right to, but is not required to, dispose of items replaced by it. Buyer shall notify Seller promptly in writing of any warranty claim or other nonconformity. Buyer agrees that these remedies provide Buyer and its successors with a minimum adequate remedy and are Buyer's exclusive remedies without regard to whether the claim of Buyer or its successor is based on contract, warranty, tort (including negligence), strict liability, indemnity, or any other legal theory, and whether arising out of warranties, representations, instructions, installations, or non-conformities from any cause.

15. Seller's Inspection: Seller may require the inspection of any goods for which any claim of nonconformity is made to determine if the goods are nonconforming. Except as otherwise provided in this paragraph, Buyer shall, at its expense, remove and ship to Seller any such nonconforming goods. In the event that Seller, after inspection, refuses to accept the return of goods from Buyer, Seller shall ship any such goods back to Buyer at Buyer's sole expense, unless otherwise agreed by Seller and Buyer. If nonconforming goods located in a State of the United States are of such a nature that the costs to Buyer for return of the same to Seller exceeds the cost, as determined by Seller, of inspection by Seller at the site where the goods are located, Seller shall send its representative to the site where the goods are located to inspect the goods, providing Buyer pays all costs incurred by Seller in such inspection. Buyer may be required to pay the costs of onsite inspection, as estimated by Seller, in advance of such inspection. In the event of an onsite inspection by Seller, Buyer shall arrange for Seller's representative to have access to the goods for which such claim is made at all reasonable times to inspect and test such goods to determine any nonconformity. Seller shall have no obligation to perform an onsite inspection of any goods not located in a State of the United States. In the event, upon inspection, Seller determines that the goods are nonconforming, Seller shall waive any restocking fees and shall provide a remedy to Buyer as set forth in this Agreement.

16. Patents and Copyrights: No representation or warranty is made that any goods or the use or sale of same do not infringe any patents, trademarks or trade names or other rights of other persons.

17. 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, investigators and travel expenses) arising, in whole or in part, from, through or in any manner related to goods custom manufactured by Seller pursuant to Buyer's criteria (*hereinafter* "Custom Goods"), except when such claim arises exclusively as a result of Seller's negligence or breach of Seller's warranty.

18. Returns and Cancellation: Goods shall not be returned to Seller unless Seller consents to the same. All requests by Buyer for authorization to return goods must be submitted in writing to Seller utilizing Seller's Return Request Form and may not be returned until Seller issues a return authorization (*hereinafter* "Return Authorization"). Buyer shall pay all cost of shipping the goods to Seller. All Return Authorizations issued for conforming goods are subject to the requirement that the goods are in "like new" condition when received by Seller. In the event Seller, after inspection, determines that the goods are in an unacceptable condition, Seller shall ship any such goods back to Buyer at Buyer's sole expense, unless otherwise agreed by Seller and Buyer. All requests for cancellation or changes to an order before the goods are shipped must be submitted to Seller in writing by Buyer.

19. Restocking Fees: In the event that Buyer cancels or changes an order for goods before the goods are shipped or if conforming goods are returned and accepted by Seller, Buyer agrees to pay a restocking fee equal to 35% of the cost for goods which are not Custom Goods and 100% of the cost for Custom Goods.

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- 20. 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 any 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.
- 21. Conflict of Forms:** In the event of conflict between this Agreement and the terms printed on Buyer's order form, the terms and conditions of this Agreement shall control dealings between Buyer and Seller. If this Agreement is silent as to a particular matter, the terms which appear on Seller's invoice shall control, and Seller's acceptance is conditioned upon Buyer's assent to the terms which appear on Seller's invoice. This Agreement may be modified by either separate written modification hereof or by the addition of terms set forth in Seller's invoice.
- 22. Notices:** A notice by Buyer or Seller to the other shall be valid if it is in writing and if delivered via any method, public or private, which requires the recipient to acknowledge, in writing, the time of delivery of the same. 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 the recipient refuses delivery. If delivery is refused, the notice is effective when sent.
- 23. Limitations on Time:** Any claim by Buyer against Seller for damages arising from, through or in any manner related to a breach of this Agreement by Seller or the goods and services sold and purchased pursuant hereto shall be barred if litigation is not initiated by Buyer within one (1) year of the date the cause of action accrues.
- 24. Limitations on Damages:** Except as otherwise specifically set forth in this Agreement, neither Buyer nor Seller shall be liable to the other for punitive, special, incidental, indirect, or consequential damages, including, without limiting the generality of the foregoing, lost profits, arising from, through or in any manner related to this Agreement or the goods and services sold by Seller to Buyer whether or not such claim is based on contract, warranty, tort (including negligence), strict liability, indemnity, or any other legal theory, and whether arising out of warranties, representations, instructions, installations, or non-conformities from any cause. In no event shall Seller's liability to Buyer for any damages arising in any manner related to the sale of goods or services to Buyer be greater than (except as otherwise required by law) a U.S. dollar amount equal to the price paid by Buyer to Seller for the goods or services upon which the claim is based. In the event that defective goods sold by Seller to Buyer causes damages or injuries to property, 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 otherwise required by law) to the remedies provided in this Agreement. The remedies provided in this Agreement shall be exclusive and shall be Buyer's sole remedies.
- 25. 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 of rejecting venue as hereinafter provided. The United Nations Convention on Contracts for the International Sale of Goods (hereinafter, the "CISG") does not apply to this Agreement and shall not be referred to or relied upon to determine any of the rights and obligations of Buyer or Seller. The CISG is strictly excluded from any consideration in any proceeding regarding the rights and obligations of Buyer and Seller under this Agreement.
- 26. 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.
- 27. CONSENT TO VENUE:** EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, ANY LITIGATION INITIATED BY BUYER AGAINST NELLO SHALL BE COMMENCED AND MAINTAINED IN EITHER THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA OR ANY INDIANA STATE COURT OF GENERAL JURISDICTION LOCATED IN ST. JOSEPH COUNTY, INDIANA AND IN NO OTHER COURT. NOTWITHSTANDING THE FOREGOING IN THIS PARAGRAPH: A) EACH PARTY SHALL HAVE THE RIGHT TO BRING AN ACTION IN ANY COURT HAVING JURISDICTION: 1) TO COLLECT A JUDGEMENT; OR, 2) IN THE EVENT VENUE AS PROVIDED IN THIS PARAGRAPH IS DENIED, TO BRING AN ACTION FOR ANY PURPOSE PERMITTED BY LAW AND B) SELLER SHALL HAVE THE RIGHT TO BRING AN ACTION AGAINST BUYER IN ANY COURT HAVING JURISDICTION: 1) TO COLLECT A DEBT; AND, 2) TO BRING AN ACTION FOR ANY OTHER PURPOSE PERMITTED BY LAW.

SELLER MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT. SELLER DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE. SELLER SHALL HAVE NO OBLIGATION TO BUYER FOR PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOST PROFITS.