

**THIS DOCUMENT
REPRESENTS THE COMPANY'S
FINAL AND COMPLETE OFFER**

E.M.D. Sales, Inc.

Negotiations between United Food and Commercial Workers Union, Local 400 and E.M.D. Sales, Inc. and E&R Sales and Marketing, Inc., for a new contract have recently concluded. **The Highlight of changes for E.M.D. Sales will be available for review on Monday, November 15, 2021 on our website at <http://www.ufcw400.org>.**

The current COVID-19 pandemic makes it impossible for us to have a traditional contract meeting. Please join us for the Zoom informational meeting for members at E.M.D. Sales, Inc. and E&R Sales and Marketing, Inc. at **5 p.m. on Saturday, November 20th**, where the Company's final offer will be explained. Details to join the event will be emailed to you after you register. You will have an opportunity to discuss the offer and have your questions answered.

The voting will take place online following the Zoom meeting using a tool called **ElectionBuddy.com**. Each member will receive a text and a unique link to access their online ballot and vote on the cell phone number they provided. Each member can only vote once using the link they receive. This will allow all members the opportunity to participate in voting on the new contract.

The ElectionBuddy text will be sent at 6:30 p.m. on Saturday, November 20th. You will have until 8 p.m. on November 20th to vote. You must be a member in good standing to attend the meeting and to vote. Details are shown below.

**ZOOM INFORMATIONAL MEETING
Saturday, November 20, 2021 - 5 p.m.**

You must register to attend this meeting. Once you register, you will receive a confirmation email with a link to attend the meeting.

RULES OF CONDUCT FOR THE INFORMATIONAL ZOOM MEETING:

1. Only matters directly bearing on the proposed contract may be discussed.
2. No member shall speak more than once on any subject until all members wishing to be heard have the opportunity to speak.

3. So that all views may be presented, members must limit their remarks on any subject to one minute.
4. Those who speak must state their name, their position, and the company where they work.

CONTRACT VOTE ON PROPOSED CHANGES

As stated above, the voting will take place online using a tool called **ElectionBuddy.com**. Each member will receive a text and a unique link to access their online ballot and vote. Each member can only vote once using the link they receive. This will allow all members the opportunity to participate in voting on the new contract.

The text message will look something like this:

“UFCW Local 400: New ballot notification. Vote here -ebv.io/LINK”

If you can't click the link in your text message, copy/paste it into your mobile phone browser or type in the URL on a computer or if for any reason you are unable to access your ballot, contact **Juan Pablo Barreno** to receive a new text to vote.

The text will be sent at 6:30 p.m. on Saturday, November 20th. You will have until **8 p.m.** on November 20th to vote. If you do not receive a **text by 6:45 p.m., please contact Juan Pablo Barreno.**

There will be a count of all ballots after voting closes at **8 p.m. on November 20, 2021.**

LINK AND QR CODE FOR THE HIGHLIGHT SHEET AND INFORMATIONAL ZOOM MEETINGS:

Link: <https://www.ufcw400.org/emd2021> or QR code:



**IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR UNION
REPRESENTATIVE AT 800-638-0800 or 301-459-3400**

**THIS DOCUMENT
REPRESENTS THE COMPANY'S
FINAL AND COMPLETE OFFER**

1. AGREEMENT

Update:

THIS AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2021 (“Execution Date”), between E.M.D. Sales, Inc. (hereinafter referred to as “Employer”), and UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 400 (hereinafter referred to as the “Union”).

2. ARTICLE 1-UNION RECOGNITION

New Language / New Section:

1.5 All work and services connected with or incidental to the handling or selling of all merchandise offered for sale to the public in the Employers' customers retail establishments covered by this Agreement shall be performed by employees of the Employer within the Union, for which the Union is recognized as the collective bargaining agency by the Employer, provided, however, Employer has the right, in its sole discretion, to engage third-parties to perform certain services otherwise performed by employees in the event of staffing and/or labor shortages. For the avoidance of doubt, no employee shall have the right to engage any third party that is not an employee of Employer to perform any services of any type on employee's behalf at any customer retail establishment. Such conduct shall be deemed a breach of this Agreement and will subject employee to disciplinary action, up to and including termination.

3. ARTICLE 2-WORK HOURS, COMPENSATION, OVERTIME AND CLASSIFICATION

Replaces previous Wage Article:

2.1 The work week for all full-time employees shall be forty (40) hours per week, consisting of five (5) eight (8) hour days provided the employee is available for work as scheduled. Notwithstanding the foregoing, an employee may from time to time work more or less than eight (8) hours per day.

2.2 The normal workday is eight (8) hours per day inclusive of a thirty-minute (30) paid lunch break. The thirty-minute (30) paid lunch break shall not be calculated as part of employee's regular rate of pay for purposes of computing overtime.

2.3 All non-exempt employees will be paid an hourly “base rate.” A non-exempt employee's hourly “base rate” for purposes of this Agreement shall be the straight time hourly rate of pay applicable to a specific employee. A non-exempt employee will receive an hourly “base rate” of either \$15.20 or \$17.50 based on whether an employee performs pack out services or does not pack out. The hourly base rate specified in this Agreement are minimum wages. The Employer has no obligation to pay any employee more than the specified wages for

the job classification. If any employee, because of meritorious service or for any other reason, receives a higher wage than is listed herein, it shall not be considered as establishing a minimum for that particular job classification, nor shall that higher wage be applicable to anyone except the specific employee receiving the higher wage.

2.4 All exempt employees who are independent store sales representatives will receive a draw, which shall be deemed an advance against their commission payments. The amount of the draw is set forth on Exhibit A, attached hereto and incorporated herein by reference.

2.5 In addition to the hourly base rate, employees may be eligible for commission payments. The commission rates are set forth on Exhibit A, attached hereto and incorporated herein by reference. The rate of commissions will vary according to the amount of sales, products being sold and the customers. The commission and any overtime compensation not already paid during the regular pay periods will be paid on a monthly basis. Employees hereby acknowledge and agree that the commission payments are based on net sales. Commission payments are included in employee's regular rate of pay. For purposes of this Agreement, net sales shall mean the amount of gross sales, minus any returns, discounts, refunds, promotions, and/or other credits (collectively, hereinafter referred to as "Credits").

2.6 All time worked by a non-exempt employee in excess of forty (40) hours in any work week shall be deemed overtime. Such overtime work shall be paid for at the rate of one and one-half (1½) times the employee's regular rate of pay. No overtime shall be worked by an employee unless it has been authorized in advance by the proper supervisory personnel of the Employer.

2.7 Employer shall have the right and sole discretion to establish a discretionary bonus plan during the course of this Agreement without limitation and for any lawful nondiscriminatory purpose, including improving productivity and morale. These discretionary bonuses are not made according to any prior contract, agreement, or promise causing employee to expect such payments regularly and the Employer has the sole discretion to determine whether to pay any bonus, and to determine the amount of any bonus. For the avoidance of doubt, an employee has no expectation to receive any discretionary bonus. Employer has the right to determine the effectiveness of, change, or discontinue this bonus plan at Employer's will. Any bonus payments made under this plan shall not be considered raises or constitute any part of employee compensation arising under this Agreement. To the extent that any discretionary bonus is paid, such bonus shall not be calculated as part of employee's regular rate of pay.

2.8 An employee’s regular rate of pay will be determined based on the following example. The below is just an example and not meant to represent an employee’s actual hourly rate, hours worked or total compensation.

Hourly Rate = \$15 per hour X 50 HRS WORKED	\$ 750.00	
Weekly Commissions AVERAGE \$2500/4 calculated at the end of the month	\$ 625.00	
Monthly	\$ 5,500.00	\$ 27.50
Total Weekly Hours = 50	\$ 1,375.00	
Regular rate = \$15 x 50 hours = \$750 + \$625 commissions = \$1375 / 50 hours = Regular Rate	\$ 27.50	
\$27.5 x .5 x 10 hours = \$137.50 Overtime Premium	\$ 137.50	
Overtime Premium of \$137.5 per week x 4 weeks	\$ 550.00	
Total Income for the month	\$ 6,050.00	\$ 30.25

2.9 Employees are paid on a biweekly basis, with checks distributed every other Friday. Accompanying each wage payment shall be a statement identifying the Employer, the employee's total wages, the employee's hourly base rate and any overtime, any commissions, and the regular rate of pay, the amount of any accrued sick leave and Paid Time Off (“PTO”), the amount and basis for any tax withholding or deduction from wages, and the employee's net wages.

2.10 Employees may enroll in Employer’s direct deposit program. Employees enrolled in the direct deposit program will have their pay deposited in their designated account on payday and pay statements will be available the ADP portal. For all other employees, paychecks and wage statements will be either hand delivered to employee on Employer’s premises or mailed to the employee's home address on file with the Employer.

2.11 The Union and Employer acknowledge and agree that following the eighteen-month (18) anniversary of the Effective Date (as defined in Article 24) of this Agreement, the parties will agree to discuss the amount of the base hourly rates and commission percentages.

2.12 All salesperson employees other than those providing services directly for independent stores shall be classified as non-exempt employees. Non-exempt employees are eligible for overtime compensation for all hours worked in excess of forty (40) hours in a workweek. Exempt or non-exempt status is generally determined by the duties and responsibilities of the position held with the Employer.

4. ARTICLE 3-MANAGEMENT RIGHTS

Language clean up:

Except as expressly modified or restricted by a specific provision of this Agreement, all statutory and inherent managerial rights, prerogatives, and functions are retained and vested exclusively in the Employer, including, but not limited to, the rights, in accordance with its sole and exclusive judgment and discretion: to reprimand, suspend, discharge, or otherwise discipline employees for Cause (as defined in Article 14); to determine the number of employees to be employed; to hire employees, determine their qualifications and assign and direct their work; to assign salespeople and merchandisers to specific routes or customers as management deems appropriate for effective marketing; to promote, demote, transfer, lay off, recall to work, to set the standards of productivity, the products to be produced, and/or the services to be rendered; to maintain the efficiency of operations; to determine the personnel, methods, means, and facilities by which operations are conducted; to set the starting and quitting time and the number of hours and shifts to be worked, including overtime work; relocate the Employer's operations or any part thereof; to control and regulate the use of machinery, facilities, equipment, and other property of the Employer; to introduce new or improved research, production, service, distribution, and maintenance methods, materials, machinery, and equipment; to determine the number, location and operation of departments, divisions, and all other units of the Employer.

5. ARTICLE 4-CHECK-OFF

Added Language:

4.1 The Union agrees to indemnify, defend and hold the Employer and its stockholders, officers, directors, employees, agents, representatives, insurers, successors and assigns harmless against any and all claims, actions, grievances, taxes, demands, compensations, judgments, losses, and suits, including reasonable attorney's fees arising by reason of any action taken by the Employer for the purpose of complying with any of the provisions of this Article.

6. ARTICLE 5-GRIEVANCE AND ARBITRATION

Language clean up:

Update "business days: to "working days: throughout the Article

7. ARTICLE 6-HOLIDAYS

New updated Language:

~~Salespersons are not eligible for paid holidays.~~

6.1 Each full-time employee who has completed six (6) months of continuous service with the Employer will be entitled to the following paid holidays, which are subject to change in the sole discretion of the Employer:

New Year's Day
Labor Day
Memorial Day
Christmas Day
Thanksgiving Day

6.2 Employees who are eligible for paid holidays shall be paid for the hours they were regularly scheduled to work on each holiday if they work their full schedule on the last regularly scheduled workday immediately before the holiday and the first regularly scheduled workday immediately after the holiday. If any holiday falls on a Saturday or Sunday, then

such holiday will not be observed by the Employer; provider, however, employees will still be paid for at least five (5) holidays per year. The hours for which employees are paid for unworked holidays shall not count as hours worked for any purpose, including overtime pay calculations.

6.3 Full time employees shall be granted holiday pay at their normal hourly base rate of pay (i.e., his/her hourly base rate earnings on a straight-time, 8-hours-per-day, 40-hours-per-week basis).

**8. ARTICLE 7-SHOP STEWARDS AND
LABOR MANAGEMENT COMMITTEE**

New updated Language:

7.2 The shop steward, or in his/her absence, the alternate, will likewise be the Union representative on the Labor Management Committee. That Committee shall meet at mutually convenient times **during normal working hours** with a management representative to discuss the business, including safety issues. Those discussions, of course, may not vary this Agreement, but are a means of discussion of issues to avoid problems, identify issues, and discuss ways to make the Company more efficient and labor management relations even better.

~~3. Since the salespersons are not hourly employees, they can set their own schedules, the meetings will be at mutually convenient times so as not to interfere with the marketing roles of the employees, and shall be without additional compensation.~~

9. ARTICLE 9-401(k) PLAN

Language clean up:

~~On the first day of the seventh (7) month anniversary of employment, all full-time employees shall be eligible to participate in the Company 401(k) Plan and may contribute to the plan. Employees hired on or after February 1, 2015 shall be eligible to participate on the one (1) year anniversary of employment.~~ All full-time employees shall be eligible to participate in the Company 401(k) Plan and may contribute to the plan starting on the one (1) year anniversary of full-time employment. If the employee contributes four percent (4%) or more toward the plan, then the Employer will contribute one percent (1%) of the employee's pay into the plan. If the employee contributes three percent (3%), then the Employer will contribute ¾ of a percent (.75%). If the employee contributes two percent (2%), then the Employer will contribute one-half of a percent (.50%) of the employee's pay into the plan. If the employee contributes one percent (1%), then the Employer contribute one-quarter of a percent (.25%) of the employee's pay into the plan.

10. ARTICLE 11-PAID TIME OFF (PTO)

Added language and clean up:

11.1 All full-time employees will be entitled to paid time off ("PTO") with pay based on their years of service as follows:

1. **Employees who have worked at the Employer for at least ninety (90) continuous days and up to four (4) consecutive years are entitled to the following:**
 - **Sixty-four (64) hours/eight (8) days of PTO awarded on January 1st of each year ("PTO 1").**

2. Employees who have worked at the Employer for five (5) consecutive years and up to nine (9) consecutive years are entitled to the following:
 - Sixty-four (64) hours/eight (8) days of PTO awarded on January 1st of each year (“PTO 1”); and
 - Thirty-two (32) hours/four (4) days of PTO accrued at a rate of 1.231 per hour per pay period for every eighty (80) hours worked or .015 per hour worked (“PTO 2”).

3. Employees who have worked at the Employer for ten (10) consecutive years or more are entitled to the following:
 - Sixty-four (64) hours/eight (8) days of PTO awarded on January 1st of each year (“PTO 1”); and
 - Seventy-two (72) hours/nine (9) days of PTO accrued at a rate of 2.769 per hour per period for every eighty (80) hours worked or .035 per hour worked (“PTO 2”).

11.2 Employees are entitled to roll over to the following year only the accrued and unused amount of PTO 2 set forth above, not the sixty-four hours (64) hours/eight (8) days of PTO 1 awarded on January 1st of each year.

11.3 Full-time employees who are hired after January 1 and have completed the ninety (90) day probationary period will receive pro-rated PTO during their year of hire through the end of the calendar year equal to one-twelfth (1/12) of the number of days of PTO for each full month of uninterrupted service prior to their one-year anniversary of employment. PTO is calculated on a yearly basis.

11.4 PTO pay will be computed and paid based on the employee's regular schedule and the employee's normal hourly base rate of pay (i.e., his/her hourly base rate earnings on a straight-time, 8-hours-per-day, 40-hours-per-week basis), except that PTO for an exempt employee will be computed and paid based on such employee's bi-weekly draw.

11.5 PTO shall not be considered hours worked for purposes of computing overtime.

11.6 The parties recognize that no PTO may be taken between November 1st and December 31st of each year and employees must provide at least thirty (30) days prior written notice of PTO, unless due to illness or other emergency or exceptions granted by law. Additionally, employees may not take more than five (5) consecutive PTO days without the prior written authorization from employee's supervisor.

11. ARTICLE 12-JURY DUTY

Added language and clean up:

~~Any employee called for Jury Duty shall be paid an amount equal to the difference in his regular salary and what he receives for his services as a member of the Jury for a period of up to 5 days.~~

Employer will pay each full-time employee the difference between his/her normal hourly base rate of pay (i.e., his straight-time hourly base rate earnings on a straight-time, 8-hours-per-day, 40-hours-per-week basis), and the amount of compensation received for jury duty service for necessary scheduled working time lost because of that service. Employees who are excused from jury duty service, either temporarily or permanently, during regular working hours or released from jury duty earlier than anticipated generally are expected to inform Employer of their availability to work the remainder of the day and return to work. Payment for missed working time due to jury service is capped at five (5) working days in any calendar year. For any additional jury duty service days, time off will be unpaid. Employees may opt to use available accrued paid time off in place of unpaid leave.

12. ARTICLE 13-BEREAVEMENT LEAVE

Added language and clean up:

~~Any employee forced to lose time because of death in his immediate family shall be paid for such time lost for a period of three (3) days. Immediate family shall be: mother, father, sister, brother, wife, children, stepparents, stepchildren, grandparents, grandchildren and domestic partner. Employee may be required to show proof of relationship and of death.~~

In the event of a death of an immediate family member, each full-time employee is entitled to three (3) days of paid leave. Employer will pay the employee eight hours' pay at the employee's hourly base rate of pay (i.e., straight-time hourly base rate earnings on a straight-time, 8-hours-per-day, 40-hours-per-week basis) for each scheduled workday lost during the leave. Immediate family shall include and employee's mother, father, sister, brother, wife, children, stepparents, stepchildren, stepbrother, stepsister, grandparents, grandchildren, in-laws, fiancé, and domestic partner. Employee may be required to show proof of relationship and of death.

13. ARTICLE 14-DISCHARGE OR SUSPENSION

Added language:

~~The Employer shall not discharge or suspend any employee without just cause. In all cases involving the discharge or suspension of any employee, the Employer shall immediately notify the employee with prompt written confirmation of his discharge or suspension and reasons therefor. Such written notice shall also be given to the Shop Steward and a copy mailed to the Union Office.~~

~~This Article shall not apply to probationary employees during the first 90 calendar days of their employment.~~

The parties acknowledge and agree that this Agreement shall not be construed as an agreement by the Employer to employ employee for any specific period of time.

The Employer reserves the right to discipline or terminate any covered employee for any lawful reason. An employee may be terminated for Cause. For purposes of this Agreement, Cause shall include, but not be limited to, theft, dishonesty, negligence, incompetence, insubordination, verbal abuse and/or harassment of a manager, coworker, or third party, such as a customer, physical violence, violations of law on Employer's time or premises, intoxication, possession or working under the influence of illegal drugs or legal narcotics, refusal, conviction of a crime, and/or continued failure to obey posted or issued Employer rules or procedures, and actions endangering the safety of others.

The Employer shall consider, among other things, the seriousness and frequency of employee misconduct when determining the appropriate discipline, which may include immediate termination. The Employer recognizes the concept of progressive discipline. However, the parties recognize that employees are not entitled to a particular number of warnings before Employer may impose discipline up to and including termination. Failure to discipline or terminate an employee for violating Employer's rules shall not constitute a waiver of Employer's right to discipline or terminate employees for the same or other violations.

14. ARTICLE 15-NO STRIKES OR LOCKOUTS

Company added language:

~~The Union agrees that there shall be no strike or stoppage of work, and the Employer agrees not to lock out members of the aforesaid Union during the term of this Agreement.~~

During the term of this Agreement, the Union, its officials, representatives, agents and members, and each employee covered by this Agreement agrees that there shall be no strike or stoppage of work, sit-down, stay-in, walkout, refusal to report to work, refusal to perform any portion of jobs, protest, boycott, picketing or other restriction, and the Employer agrees not to lock-out members of the Union.

15. ARTICLE 20-NEW TECHNOLOGY/TIMEKEEPING

Language clean up:

~~ELECTRONIC DEVICES~~

~~Salespersons are supplied with electronic devices by the Employer. If the electronic device is lost, destroyed, or damaged by the negligence of the Employee, that Employee may be charged the actual cost of repair up to \$500 for the repair and/or replacement of the electronic device.~~

NEW TECHNOLOGY/TIMEKEEPING

20.1 The Employer will provide each salesperson employee with a personal digital assistant ("PDA") and the AT&T Workforce mobile application will be installed on each PDA. Each employee is required to use the PDA for purposes of performing its services on behalf of Employer, including, but not, limited to, making, and receiving calls, sending, and receiving text messages, email, taking and sending photos, processing orders of products, clocking in when an employee arrives at their first store to begin their workday and clocking out when an employee ends their workday at the last store, reporting their location and travel time between stores. Each PDA will be outfitted with GPS capability, which is not to be turned off while the employee is working and performing services on behalf of the Employer.

20.2 To ensure that Employer has complete and accurate time records and that employees are paid for all hours worked, employees must record all working time, including any hours worked outside of their normal schedule. Employees must record all work hours, including the starting and stopping times each workday, and all time away from work, including the starting and stopping times of lunch breaks. Employees must use Employer’s PDA and AT&T Workforce Manager application to record their time and alert their supervisor as soon as possible of any timekeeping errors. Falsifying time entries, including by working "off the clock," is strictly prohibited.

20.3 If the PDA is lost, damaged, or destroyed by employee, then employee may be charged up to \$500.00 per PDA for the repair and/or replacement of the PDA.

16. ARTICLE XX-GAS ALLOWANCE

New Article:

Employer will provide to employees making less than sixty thousand dollars (\$60,000.00) per year with a two hundred dollar (\$200.00) per month gas allowance. Employer will provide to employees making more than sixty thousand dollars (\$60,000.00) per year with a one hundred and fifty dollar (\$150.00) per month gas allowance. No employee is entitled to reimbursement for any mileage.

17. ARTICLE XX-INVALIDATION

New Article:

Should any Article, Section, or portion hereof, of this Agreement be held unlawful and unenforceable by any court of competent jurisdiction, such decision of the court shall apply only to the specific Article, Section, or portion thereof directly specified in the decision, provided, however, that upon such a decision the parties agree immediately to negotiate a substitute for the invalidated Article, Section, or portion thereof.

18. ARTICLE 24-DURATION OF CONTRACT

Language clean up:

This Agreement shall be for the period from _____, 2021 (“Effective Date”) through, _____, 2024 and shall continue in effect from year to year thereafter under the same terms and conditions, unless one of the parties desiring a change or changes gives written notice thereof to the other at least sixty (60) days prior to any expiration date. In the event either party serves written notice, it is mutually agreed that the Employer and the Union shall immediately begin negotiations in the matter of the proposed change or changes and that pending the result of negotiations, neither party shall change the conditions existing under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly subscribed by their duly authorized representatives this ____ day of _____ 2021, and this Agreement shall be binding upon their heirs, administrators, successors, and assigns.

FOR THE EMPLOYER:

FOR THE UNION:

By: _____
Elda M. Devarie, President
EMD SALES, INC.

Mark P. Federici, President
UFCW LOCAL 400

EXHIBIT A
COMMISSION RATES

Non-Exempt Employees:

1.2% on net sales to Cash and Carry's, wholesalers, Sub distributors and tractor trailer sales;

1.25% on net sales per month if less than \$125,000;

2.5% on net sales per month if equal to or more than \$125,000.

Exempt Employees:

1.2% on net sales to Cash and Carry's, wholesalers, Sub distributors and tractor trailer sales;

4% for net sales to independent accounts;

The amount of the draw shall be between \$500.00 and \$1,000.00 per week, as determined by Employer.