



NCC USA Inc. Terms and Conditions (2025)

NOTICE: Sale of any Goods or Services, as each is defined in the Contract, is expressly conditioned on Buyer's assent to these Terms and Conditions. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions and Seller expressly objects to any additional or different terms proposed by Buyer. No Buyer form shall modify these Terms and Conditions, nor shall any course of performance, course of dealing, or usage of trade operate as a modification or waiver of these Terms and Conditions. Any order to purchase products or receive services shall constitute Buyer's assent to these Terms and Conditions. Seller's quotation shall expire on the date set forth in the quotation and may be modified or withdrawn by Seller before receipt of Buyer's conforming acceptance. Fulfillment by Seller of any order by Buyer shall not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms and Conditions.

1. Definitions.

"Buyer" means the entity to which Seller is providing Goods or Services under the Contract.

"Contract" means either the contract agreement signed by both parties, or the purchase order signed by Buyer and accepted by Seller in writing, for the sale of Goods and/or Services, together with these Terms and Conditions, Seller's final quotation, the agreed scope(s) of work, and Seller's order acknowledgement, but expressly excluding any additional or different terms proposed by Buyer in accordance with the Notice provision above. Unless expressly agreed to in writing and signed by seller, the Terms and Conditions shall take precedence over other documents included in the Contract.

"Contract Price" means the agreed price stated in the Contract for the sale of Goods and/or Services, including adjustments (if any) in accordance with the Contract.

"Goods" means the products, parts, materials, supplies, and other goods (including any installment of the goods or parts) Seller has agreed to supply to Buyer under the Contract.

"Seller" means the entity providing Goods or performing Services under the Contract.

"Services" means the services Seller has agreed to perform for Buyer under the Contract.

"Terms and Conditions" means these "General Terms and Conditions for the Sale of Goods or Services," together with any modifications or additional provisions specifically stated in Seller's final quotation or specifically agreed upon by Seller in writing.

"Third Party Goods" means Goods sold by the Seller which have been manufactured by a party other than the Seller.

2. Delivery and Shipping Terms.

- a) Except as otherwise set forth in Seller's quotation or another instrument executed by both parties, (i) Seller shall deliver Goods to Buyer FCA Seller's facility or warehouse (Incoterms 2020), and (ii) Buyer shall pay all delivery costs and charges or pay Seller's standard shipping charges plus handling. Partial deliveries are permitted. Seller may deliver Goods in advance of the delivery schedule. If Goods delivered do not correspond in quantity, type, specification or price to those itemized in the shipping invoice or documentation, Buyer shall notify Seller within seven (7) days after receipt.
- b) Delivery schedules are estimates only and assume timely receipt of all necessary information and documentation from Buyer, and Seller assumes no responsibility or liability for any delays. All requested delivery dates, shipments and order lead times are subject to Seller's ability to (i) obtain the Goods and (ii) schedule or provide transportation. Buyer shall cooperate fully with Seller's efforts to deliver the Goods, and shall be appropriately prepared to safely and promptly receive the Goods when delivered. Buyer shall provide adequate access to on-site tanks, or other suitable receptacles, to allow for the efficient unloading of the Goods.
- c) The full legal and beneficial title to the Goods shall remain with Seller until Buyer has paid the Seller in full in respect of the Goods and all other sums due by the Buyer. Until payment in full for the Goods and all other sums due, Buyer will have possession of the Goods as bailee for the Seller. At any time prior to the Buyer paying for the Goods and any other sums due, the Seller may, by written notice, determine the Buyer's right to sell the Goods. The Buyer shall hold all Goods in trust for the Seller until payment has been made in full.
- d) Risk of loss shall pass to Buyer upon delivery pursuant to Section 2(a).
- e) If any Goods to be delivered under this Contract cannot be shipped to or received by Buyer when ready due to any cause attributable to Buyer, Seller may ship the Goods to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder, all at Buyer's sole expense. If Seller places Goods into storage, the following apply: (i) title and risk of loss immediately pass to Buyer, if they have not already passed pursuant to Section 2(b), and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be due; (iii) a fee of two percent (2%) of the value of the Goods will be charged to Buyer; and (iv) when conditions permit and upon payment of all amounts due, Seller shall make Goods and repaired equipment available to Buyer for delivery.
- f) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.



3. Cancellation of Purchase Order.

Buyer may cancel its order only with the prior written consent of Seller, which Seller may withhold in its sole discretion. All cancellations will be subject to payment to Seller of reasonable cancellation charges.

4. Inspection and Acceptance of Goods

Buyer shall inspect all Goods within seven (7) days of the transfer of title to Buyer in accordance with Article 2. Buyer shall be deemed to have accepted all Goods unless Buyer notifies Seller in writing during such seven (7) day period that any Goods do not conform to the applicable Seller specifications. Buyer may return Goods (including any nonconforming Goods) only at its sole cost and only with the prior written authorization of Seller, subject to a restocking fee as agreed by the parties. At Seller's sole option, Seller will repair or replace any nonconforming Goods or refund to Buyer the purchase price for such Goods, in any case as Buyer's sole remedy for such nonconforming Goods. Notwithstanding the foregoing, no returns of special, custom, or made-to-order Goods will be permitted. No returns will be permitted, in any case, more than thirty (30) days after delivery.

5. Title and Risk of Loss.

Title and risk of loss passes to Buyer pursuant to the terms of Article 2. As collateral security for the full payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code. Seller shall have the right to file any and all documents and take any action it deems necessary to fully establish protection of its security interest in the Goods; however, the failure of Seller to file any such document shall not in any way act as a waiver of Seller's right to such security interest.

6. Contract Price.

- a) Buyer shall purchase the Goods and, if applicable, shall pay for the Services provided, from Seller at the Contract Price. Prior to Seller's acceptance of quotation and assent to these Terms and Conditions, quoted prices are subject to change without prior notice. Unless otherwise set forth in an instrument executed by both parties, upon acceptance of an order by Seller, Seller shall have the right to revise the price of any Goods by written notice (including email) to Buyer. In the event of a price increase, Buyer may cancel any undelivered portion of any order by written notice to Seller, provided such notice is received by Seller not more than ten (10) days after Buyer's receipt of Seller's notice of a price increase. Upon cancellation, Buyer shall pay Seller: (1) the Contract Price for all Goods which have been completed or are in the process



of completion, (2) components or goods secured by Seller from outside sources for the performance of the Contract, and (3) specially made goods and/or equipment procured for the performance of the Contract. All prices shall be confidential, and Buyer shall not disclose such prices to any party in accordance with Article 20.

- b) All Contract Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.
- c) The Contract Price excludes shipping and handling charges as well as any tariffs that may apply to the Goods, all of which are the obligation of Buyer and will be added to the invoice if prepaid by Seller.

7. Payment Terms.

- a) Unless otherwise set forth in the quotation or other instrument executed by both parties, terms of payment are net cash thirty (30) days following the date of invoice in U.S. currency, or by letter of credit paid upon submittal of shipping documents, all payable in the currency specified in the invoice.
- b) Buyer shall pay interest on all late payments at the lesser of the rate of 2% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees and court costs. In addition to all other remedies available under these Terms and Conditions or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for thirty (30) days following written notice thereof.
- c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.
- d) If Buyer disputes any invoice or portion thereof, it shall notify Seller in writing within thirty (30) days of receipt of said invoice, detail the reason for the dispute, and pay all undisputed amounts. All charges not timely disputed in writing shall be deemed to be undisputed and shall be due and payable as set forth above.

8. Warranty; Disclaimer of Warranties.

- a) Seller warrants that all Goods manufactured by Seller shall, at the time of sale, comply with applicable Seller specifications. All Third Party Goods (including goods where the Seller has only manufactured a component part of the Goods, are sold only with the warranties provided by the third-party manufacturer of such Goods, if any. Unless expressly set forth in a separate service agreement, Seller makes no warranties with respect to any Services provided by Seller pursuant to this Contract. Further, Seller makes no warranty with respect to, or guarantee of, a minimum shelf life for any Goods, and the determination of the suitability of the Goods supplied hereunder for the uses and applications contemplated by Buyer and others shall be the sole responsibility of Buyer. SELLER MAKES NO OTHER WARRANTY WITH RESPECT TO THE GOODS OR SERVICES, AND DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. Seller does not authorize any agent, representative, or personnel to make any other warranties or alter this disclaimer of warranty.
- b) All Goods are sold for commercial use only and are not intended for use by consumers. Any inspection services provided by Seller at Buyer's request shall be provided as a customer service only and shall not be deemed to act as a warranty or approval of Buyer's installation, use, or maintenance of the Goods, nor shall Seller be liable for failure to detect improper use, installation or maintenance of the Goods by Buyer.

9. Limitation of Liability; Hazards.

- a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY (i) LOSSES ARISING OUT OF RELATING TO ANY DELAY IN DELIVERY, OR (II) LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, COSTS OF COVER, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THOSE SPECIFIC PRODUCT(S) PURCHASED BY BUYER HEREUNDER THAT ARE THE SUBJECT OF THE CLAIM OR, AS TO SERVICES, FOR THE AMOUNTS PAID TO SELLER FOR THE SPECIFIC SERVICES PERFORMED BY SELLER HEREUNDER THAT ARE THE SUBJECT OF THE CLAIM.

- c) This limitation of liability is a material basis for the parties' bargain and reflects the bargained-for allocation of risks between Seller and Buyer, without which Seller would not have agreed to provide the Goods or Services at the price charged.
- d) Buyer acknowledges that there may be hazards associated with the possession and use of the Goods, including any containers related thereto, and Buyer assumes all liability arising out of, resulting from, or in any way related to, Buyer's storage, possession, transportation, handling, resale or use of the Goods.

10. Indemnification.

Buyer shall indemnify, defend and hold harmless Seller from and against all damages, losses, expenses and costs (including reasonable attorneys' fees and costs and expenses related to the enforcement by Seller of any such indemnity obligation) related to or arising from claims brought by a third party, on account of personal injury or damage to tangible property in connection with Buyer's obligations under this Contract and/or Buyer's handling, use, or sale of the Goods.

11. Adequate Assurance.

Seller reserves the right by written notice to cancel any order or require full or partial payment or adequate assurance of performance from Buyer without liability to Seller in the event of: (i) Buyer's insolvency, (ii) Buyer's filing of a voluntary petition in bankruptcy, (iii) the appointment of a receiver or trustee for Buyer or (iv) the execution by Buyer of an assignment for the benefit of creditors. Seller reserves its right to suspend its performance until payment or adequate assurance of performance is received and also reserves its right to cancel Buyer's credit at any time for any reason.

12. Intellectual Property Rights.

- a) Seller is unable to guarantee that no patent rights, copyrights, trademarks, (user) rights, trade models or any other rights of third parties are infringed by goods received from suppliers and/or buyers via Seller or any third parties, including but not limited to goods, models, and drawings for the manufacture and/or delivery of certain Goods.
- b) In the absence of written agreement to the contrary, Seller holds the copyrights and all rights of (industrial) property to the offers it has made and the designs, images, drawings (test) models, software, templates, and other goods that it has issued.
- c) Buyer agrees that no express or implied licenses or other rights relating to any intellectual property of Seller, or the Goods are provided to Buyer hereunder. Title in all intellectual property of Seller and the Goods (including intellectual property licensed to Seller) shall remain at all times in Seller.

13. Compliance with Laws.

The Goods, items, technology, or software covered by a quotation/order may be subject to various laws including U.S. and foreign export controls. Seller is committed to complying with all relevant export laws. If these items are being exported from the United States, the following statement applies, "These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited." Buyer is responsible for applying for export licenses, if required, based on end user or country of ultimate destination. Seller's obligations are conditioned upon Buyer's compliance with all U.S. and other applicable trade control laws and regulations. Buyer shall not trans-ship, re-export, divert or direct Goods other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice. Buyer agrees to indemnify, defend, and hold Seller harmless from any and all costs, liabilities, penalties, sanctions and fines related to non-compliance with applicable export laws and regulations, including reasonable attorneys' fees and costs and expenses related to the enforcement by Seller of any such indemnification obligation.

14. Packaging

Packaging may be provided by Seller to Buyer on the following conditions (unless otherwise specified in a subsequent signed writing):

- a) Returnable, rental or loaned packaging. Such packaging shall remain the property of the Seller or its agents and shall not be used for other purposes. The Buyer shall be liable for any damage or loss caused by such packaging while in the Buyer's possession. The packaging must be returned to the Seller not later than two months after the date of delivery and in the event of its destruction, deterioration or non-return within this time, the Buyer shall be liable for the loss or replacement of the packing or its repair or for damages suffered by the Seller;
- b) Invoiced packing. Such packaging shall on delivery become the property of the Buyer and the Buyer shall, promptly after delivery, remove the name and other markings of the Seller from the packaging together with any other markings not corresponding to its use. The Seller shall not be liable for any loss or damages caused through improper use of the packaging not in accordance with its technical capacity or purpose;
- c) Tankers and containers. The time taken to empty containers and tankers shall not exceed two hours. After such time, the Seller reserves the right to charge demurrage at the official rate;
- d) Special pressurized packing. Notwithstanding any special arrangements, the Seller reserves the right to invoice such packing to the Buyer at replacement cost plus compensation should the Buyer fail to return the packing within a period of four months. This time limit cannot be extended without the express consent of the Seller;



15. Termination.

In addition to any remedies that may be provided under these Terms and Conditions, Seller may terminate this Contract with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Contract and such failure continues for thirty (30) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms and Conditions, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

16. Amendment and Modification.

These Terms and Conditions may only be amended or modified in a writing which specifically states that it amends these Terms and Conditions and is signed by an authorized representative of each party.

17. Waiver.

No waiver by Seller of any of the provisions of this Contract is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Contract operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18. Confidential Information.

All non-public, confidential or proprietary information of Seller or provided by Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Contract is confidential, solely for the use of performing this Contract and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Article. This Article does not apply to information that is: (a) in the public domain through no fault of Buyer; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party that had a lawful right to disclose it.



19. Force Majeure.

Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller, or Seller's suppliers, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, or the worsening, escalation or expansion of any of the foregoing.

20. Assignment.

Buyer shall not assign any of its rights or delegate any of its obligations under this Contract without the prior written consent of Seller. Any purported assignment or delegation in violation of this Article is null and void and shall not relieve Buyer of any of its obligations under this Contract.

21. Relationship of the Parties.

The relationship between the parties is that of independent contractors. Nothing contained in this Contract shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

22. Governing Law.

All matters arising out of or relating to this Contract are governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any other jurisdiction.

23. Submission to Jurisdiction.

Any legal suit, action or proceeding arising out of or relating to this Contract shall be commenced in the federal courts of the United States of America or the courts of the State of Delaware. Each party irrevocably (i) submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding arising out of these Terms and Conditions, and (ii) waives their right to a trial by jury.

24. Notices.

All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Contract or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), electronic transmission (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Contract, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Article.

25. Severability.

If any term or provision of this Contract is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Contract or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. Survival.

Provisions of these Terms and Conditions which by their nature should apply beyond the Term of the Contract will remain in force after any termination or expiration of these Terms and Conditions including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Indemnification, Submission to Jurisdiction, and Survival.

27. Complete Agreement.

This Contract constitutes the entire agreement between Buyer and Seller relating to the subject matter hereof, and supersede all prior and contemporaneous discussions, understandings, and agreements related to the subject matter hereof.

28. Language.

The parties have expressly requested that this Contract and all related documents be drafted in the English language.