

TERMS AND CONDITIONS

1. SERVICES & DELIVERABLES.

Seller agrees to perform the services ("Services") and/or provide the goods or Service deliverables (collectively referred to as "Goods"), described in any purchase order, in accordance with the applicable purchase order, scope of work and with these Terms and Conditions ("Agreement"). Upon acceptance of a purchase order, shipment of Goods or commencement of a Service, Seller shall be bound by the provisions of this Agreement, including all provisions set forth on the face of any applicable purchase order, whether Seller acknowledges or otherwise signs this Agreement or the purchase order, unless Seller objects to such terms in writing prior to shipping Goods or commencing Services.

2. DELIVERY.

Time is of the essence. Delivery of Goods shall be made pursuant to the schedule, via the carrier and to the place specified on the face of the applicable purchase order. NCC reserves the right to return, shipping charges collect, all Goods received in advance of the delivery schedule. If no delivery schedule is specified, the order shall be filled promptly and delivery will be made by the most expeditious form of land transportation. If no method of shipment is specified in the purchase order, Seller shall use the least expensive carrier. In the event Seller fails to deliver the Goods within the time specified, NCC may, at its option, decline to accept the Goods and terminate the Agreement or may demand its allocable fair share of Seller's available Goods and terminate the balance of the Agreement. Seller shall package all items in suitable containers to permit safe transportation and handling. Each delivered container must be labeled and marked to identify contents without opening and all boxes and packages must contain packing sheets listing contents. NCC's purchase order number must appear on all shipping containers, packing sheets, delivery tickets and bills of lading.

3. IDENTIFICATION, RISK OF LOSS & DESTRUCTION OF GOODS.

Identification of the Goods shall occur in accordance with Section 1302.45 of the Ohio Revised Code. Seller assumes all risk of loss until receipt by NCC. Title to the Goods shall pass to NCC upon receipt by it of the Goods at the designated destination. If the Goods ordered are destroyed prior to title passing to NCC, NCC may at its option cancel the Agreement or require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, NCC shall have the right to require delivery of the Goods not destroyed.

4. PAYMENT.

As full consideration for the performance of the Services, delivery of the Goods and the assignment of rights to NCC as provided herein, NCC shall pay Seller (i) the amount agreed upon and specified in the applicable purchase order, or (ii) Seller's quoted price on date of shipment (for Goods), or the date Services were started (for Services), whichever is lower. Applicable taxes and other charges such as shipping costs, duties, customs, tariffs, imposts and government imposed surcharges shall be stated separately on Seller's invoice. Payment is made when NCC's check is mailed. Payment shall not constitute acceptance. All personal property taxes assessable upon the Goods prior to receipt by NCC of Goods conforming to the purchase order shall be borne by Seller. Seller shall invoice NCC for all Goods delivered and all Services actually performed. Each invoice submitted by Seller must be provided to NCC within ninety (90) days of completion of the Services or delivery of Goods and must reference the applicable purchase order, and NCC reserves the right to return all incorrect invoices. NCC will receive a 2% discount of the invoiced amount for all invoices that are submitted more than ninety (90) days after completion of the Services or delivery of the Goods. Unless otherwise specified on the face of a purchase order, NCC shall pay the invoiced amount within sixty (60) days after receipt of a correct invoice. Seller will receive no royalty or other remuneration on the production or distribution of any products developed by NCC or Seller in connection with or based on the Goods or Services provided.

5. WARRANTIES.

5.1 Services: Seller represents and warrants that all Services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by current, good and sound professional procedures. Further, Seller represents and warrants that the Services shall be completed in accordance with applicable specifications and shall be correct and appropriate for the purposes contemplated in this Agreement. Seller represents and warrants that the performance of Services under this Agreement will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction to which Seller is bound.

5.2 Goods: Seller warrants that all Goods provided will be new and will not be used or refurbished. Seller warrants that all Goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications for a period of fifteen (15) months from the date of delivery to NCC or for the period provided in Seller's standard warranty covering the Goods, whichever is longer. Seller hereby agrees that it will make spare parts available to NCC for a period of five (5) years from the date of shipment at Seller's then current price, less applicable discounts. Additionally, Goods purchased shall be subject to all written and oral express warranties made by Seller's agents, and to all warranties provided for by the Ohio Uniform Commercial Code. All warranties shall be construed as conditions as well as warranties and shall not be exclusive. Seller shall furnish to NCC Seller's standard warranty and service guaranty applicable to the Goods. All warranties and Service guaranties shall run both to NCC and to its customers.

If NCC identifies a warranty problem with the Goods during the warranty period, NCC will promptly notify Seller of such problems and will return the Goods to Seller, at Seller's expense. Within five (5) business days of receipt of the returned Goods, Seller shall, at NCC's option, either repair or replace such Goods, or credit NCC's account for the same. Replacement and repaired Goods shall be warranted for the remainder of the warranty period or six (6) months, whichever is longer.

6. INSPECTION.

NCC shall have a reasonable time after receipt of Goods or Service deliverables and before payment to inspect them for conformity hereto, and Goods received prior to inspection shall not be deemed accepted until NCC has run an adequate test to determine whether the Goods conform to the specifications hereof. Use of a portion of the Goods for the purpose of testing shall not constitute an acceptance of the Goods. If Goods tendered do not wholly conform with the provisions hereof, NCC shall have the right to reject such Goods. Nonconforming Goods will be returned to Seller freight collect and risk of loss will pass to Seller upon NCC's delivery to the common carrier. NCC and/or its customers reserve the right to perform on site inspection of goods and services contracted by NCC.

7. INDEPENDENT CONTRACTOR.

NCC is interested only in the results obtained under this Agreement; the manner and means of achieving the results are subject to Seller's sole control. Seller is an independent contractor for all purposes, without express or implied authority to bind NCC by contract or otherwise. Neither Seller nor its employees, agents or subcontractors ("Seller's Assistants") are agents or employees of NCC, and therefore are not entitled to any employee benefits of NCC, including but not limited to, any type of insurance. Seller shall be responsible for all costs and expenses incident to performing its obligations under this Agreement and shall provide Seller's own supplies and equipment.

8. SELLER RESPONSIBLE FOR TAXES AND RECORDS.

Seller shall be solely responsible for filing the appropriate federal, state and local tax forms, including, without limitation, a Schedule C or a Form 1020, and paying all such taxes or fees, including estimated taxes and employment taxes, due with respect to Seller's receipt of payment under this Agreement. Seller further agrees to provide NCC with reasonable assistance in the event of a government audit. NCC shall have no responsibility to pay or withhold from any payment to Seller under this Agreement, any federal, state or local taxes or fees. NCC will regularly report amounts paid to Seller by filing Form 1099-MISC with the Internal Revenue Service.

9. INSURANCE.

Seller shall be solely responsible for maintaining and requiring Seller's Assistants to maintain such adequate health, auto, workers' compensation, unemployment compensation, disability, liability, and other insurance, as is required by law or as is the common practice in Seller's and Seller's Assistants' trades or businesses, whichever affords greater coverage. Upon request, Seller shall provide NCC with certificates of insurance or evidence of coverage before commencing performance under this Agreement. Seller shall provide adequate coverage for any NCC property under the care, custody or control of Seller or Seller's Assistants.

Seller shall indemnify, hold harmless, and at NCC's request, defend NCC, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit arising out of or in any way connected with the Goods or Services provided under this Agreement, including, without limitation, (i) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean up costs, (ii) Seller failing to satisfy the Internal Revenue Service's guidelines for an independent contractor, (iii) any claim based on the negligence, omissions or willful misconduct of Seller or any Seller's Assistants, and (iv) any claim by a third party against NCC alleging that the Goods or Services, the results of such Services, or any other products or processes provided under this Agreement, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes. Seller shall not settle any such suit or claim without NCC's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by NCC in enforcing this indemnity, including attorneys' fees.

Should NCC's use, or use by its distributors, subcontractors or customers, of any Goods or Services purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, either (a) substitute fully equivalent non-infringing Goods or Services; (b) modify the Goods or Services so that they no longer infringe but remain fully equivalent in functionality; (c) obtain for NCC, its distributors, subcontractors or customers the right to continue using the Goods or Services; or (d) if none of the foregoing is possible, refund all amounts paid for the infringing Goods or Services.

11. CONFIDENTIALITY.

Seller will acquire knowledge of NCC Confidential Information (as defined below) in connection with its performance hereunder and agrees to keep such NCC Confidential Information in confidence during and following termination or expiration of this Agreement. "NCC Confidential Information" includes but is not limited to all information, whether written, electronic or oral, in any form, including without limitation, information relating to the research, development, products, methods of manufacture, designs, drawings, calculations, trade secrets, business plans, customers, vendors, finances, personnel data, Work Product (as defined herein) and other material or information considered proprietary by NCC relating to the current or anticipated business or affairs of NCC which is disclosed directly or indirectly to Seller. In addition, NCC Confidential Information means any third party's proprietary or confidential information disclosed to Seller in the course of providing Services or Goods to NCC. NCC Confidential Information does not include any information (i) which Seller lawfully knew without restriction on disclosure before NCC disclosed it to Seller, (ii) which is now or becomes publicly known through no wrongful act or failure to act of Seller, (iii) which Seller developed independently without use of the NCC Confidential Information, as evidenced by appropriate documentation, or (iv) which is hereafter lawfully furnished to Seller by a third party as a matter of right and without restriction on disclosure. In addition, Seller may disclose Confidential Information which is required to be disclosed pursuant to a requirement of a government agency or law so long as Seller provides prompt notice to NCC of such requirement prior to disclosure.

Seller agrees not to copy, alter or directly or indirectly disclose any NCC Confidential Information. Additionally, Seller agrees to limit its internal distribution of NCC Confidential Information to Seller's Assistants who have a need to know, and to take steps to ensure that the dissemination is so limited, including the execution by Seller's Assistants of nondisclosure agreements with provisions substantially similar to those set forth herein. In no event will Seller use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of NCC Confidential Information.

Seller further agrees not to use the NCC Confidential Information except in the course of performing hereunder and will not use such NCC Confidential Information for its own benefit or for the benefit of any third party. The mingling of the NCC Confidential Information with information of Seller shall not affect the confidential nature or ownership of the same as stated hereunder. Seller agrees not to design or manufacture any products which incorporate NCC Confidential Information. All NCC Confidential Information is and shall remain the property of NCC. Upon NCC's written request or the termination of this Agreement, Seller shall return, transfer or assign to NCC all NCC Confidential Information, including all Work Product, as defined herein, and all copies thereof.

12. OWNERSHIP OF WORK PRODUCT.

For purposes of this Agreement, "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, Service deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Seller

alone or with others which result from or relate to the Services performed hereunder. Standard Goods manufactured by Seller and sold to NCC without having been designed, customized or modified for NCC do not constitute Work Product. All Work Product shall at all times be and remain the sole and exclusive property of NCC. Seller hereby agrees to irrevocably assign and transfer to NCC and does hereby assign and transfer to NCC all of its worldwide right, title and interest in and to the Work Product including all associated intellectual property rights. NCC will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to follow any other procedure that NCC deems appropriate. Seller agrees: (a) to disclose promptly in writing to NCC all Work Product in its possession; (b) to assist NCC in every reasonable way, at NCC's expense, to secure, perfect, register, apply for, maintain, and defend for NCC's benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in NCC's name as it deems appropriate; and (c) to otherwise treat all Work Product as NCC Confidential Information as described above. These obligations to disclose, assist, execute and keep confidential survive the expiration or termination of this Agreement. All tools and equipment supplied by NCC to Seller shall remain the sole property of NCC.

Seller will ensure that Seller's Assistants appropriately waive any and all claims and assign to NCC any and all rights or any interests in any Work Product or original works created in connection with this Agreement. Seller irrevocably agrees not to assert against NCC or its direct or indirect customers, assignees or licensees any claim of any intellectual property rights of Seller affecting the Work Product.

NCC will not have rights to any works conceived or reduced to practice by Seller which were developed entirely on Seller's own time without using equipment, supplies, facilities or trade secret or NCC Confidential Information, unless (i) such works relate to NCC's business, or NCC's actual or demonstrably anticipated research or development, or (ii) such works result from any Services performed by Seller for NCC.

13. NONINTERFERENCE WITH BUSINESS.

During and for a period of two years immediately after the termination or expiration of this Agreement, Seller agrees not to unlawfully interfere with the business of NCC in any manner, and further agrees not to solicit or induce any employee or independent contractor to terminate or breach an employment, contractual or other relationship with NCC.

14. TERMINATION.

NCC may terminate this Agreement upon written notice to Seller if Seller fails to perform or otherwise breaches this Agreement, files a petition in bankruptcy, becomes insolvent, or dissolves. In the event of such termination, NCC shall pay Seller for the portion of the Services satisfactorily performed and those conforming Goods delivered to NCC through the date of termination, less appropriate offsets, including any additional costs to be incurred by NCC in completing the Services.

NCC may terminate this Agreement, or any Service(s), for any other reason upon thirty (30) days' written notice to Seller. Seller shall cease to perform Services and/or provide Goods under this Agreement on the date of termination specified in such notice. In the event of such termination, NCC shall be liable to Seller only for those Services satisfactorily performed and those conforming Goods delivered to NCC through the date of termination, less appropriate offsets.

Seller may terminate this Agreement upon written notice to NCC if NCC fails to pay Seller within sixty (60) days after Seller notifies NCC in writing that payment is past due.

Upon the expiration or termination of this Agreement for any reason: (a) each party will be released from all obligations to the other arising after the date of expiration or termination, except for those which by their terms survive such termination or expiration; and (b) Seller will promptly notify NCC of all NCC Confidential Information or any Work Product in Seller's possession and, at the expense of Seller and in accordance with NCC's instructions, will promptly deliver to NCC all such NCC Confidential Information and/or Work Product.

15. REMEDIES.

If Seller breaches this Agreement, NCC shall have all remedies available by law and at equity. For the purchase of Goods, Seller's sole remedy in the event of breach of this Agreement by NCC shall be the right to recover damages in the amount equal to the difference between market price at the time of breach and the purchase price specified in the Agreement. No alternate method of measuring damages shall apply to this transaction. Seller shall have no right to resell Goods for NCC's account in the event of wrongful rejection, revocation of acceptance, failure to make payment or repudiation by NCC and any resale so made shall be for the account of Seller.

16. FORCE MAJEURE.

NCC shall not be liable for any failure to perform including failure to (i) accept performance of Services or, (ii) take delivery of the Goods as provided caused by circumstances beyond its control which make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of war, government action, accident, labor difficulties or shortage, inability to obtain materials, equipment or transportation. In the event NCC is so excused, either party may terminate the Agreement and NCC shall at its expense and risk, return any Goods received to the place of shipment.

17. SEVERABILITY.

If any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

18. LIMITATION OF LIABILITY.

IN NO EVENT SHALL NCC BE LIABLE TO SELLER OR SELLER'S ASSISTANTS, OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, WHETHER OR NOT NCC WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

19. ASSIGNMENT; WAIVER.

Seller may not assign this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of NCC. Any assignment or transfer without such written consent shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of NCC without restriction. A waiver of any default hereunder or of any term or condition of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.

20. NONEXCLUSIVE AGREEMENT.

This is not an exclusive agreement. NCC is free to engage others to perform Services or provide Goods the same as or similar to Seller's. Seller is free to, and is encouraged to, advertise, offer and provide Seller's Services and/or Goods to others; provided however, that Seller does not breach this Agreement.

21. NOTICES.

Except for Purchase Orders which may be sent by local mail, facsimile transmission, or electronically transmitted,, all notices, and other communications hereunder shall be in writing, and shall be addressed to Seller or to an authorized NCC representative, and shall be considered given when (a) delivered personally, (b) sent by confirmed telex or facsimile, (c) sent by commercial overnight courier with written verification receipt, or (d) three (3) days after having been sent, postage prepaid, by first class or certified mail.

22. SURVIVAL OF OBLIGATIONS.

Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

23. GOVERNING LAW.

This Agreement shall be construed in accordance with, and disputes shall be governed by, the laws of the State of Ohio, excluding its conflict of law rules. The Common Pleas Court of the County of Montgomery or the United States District Court for the Southern District of Ohio shall have jurisdiction and venue over all controversies arising out of, or relating to, this Agreement. The applicability of the UN Convention on Contracts for the International Sale of Goods is hereby expressly waived by the parties and it shall not apply to the terms and conditions of this Agreement.

24. ENTIRE AGREEMENT; MODIFICATION.

This Agreement is the complete, final and exclusive statement of the terms of the agreement between the parties and supersedes any and all other prior and contemporaneous negotiations and agreements, whether oral or written, between them relating to the subject matter hereof. This Agreement may not be varied, modified, altered, or amended except in writing, including a purchase order or a change order issued by NCC, signed by the parties. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgment or other document submitted by Seller. Notwithstanding the foregoing, this Agreement will not supersede or take the place of any written agreement which is signed by both parties and covers the same subject matter as this Agreement or its related purchase orders.

25. COMPLIANCE WITH LAWS.

25.1 General: Seller shall comply fully with all applicable federal, state and local laws in the performance of this Agreement including, but not limited to, all applicable employment, tax, export control and environmental laws.

25.2 Equal Employment Opportunity: NCC is a government contractor and is subject to the requirements of Executive Order 11246, the Rehabilitation Assistance Act. Pursuant to these requirements, the Equal Opportunity Clauses found at 41 Code of Federal Regulations sections 60-1.4(a) (1-7), 60-250.4(a-m) and 60-741.5 (a) (1-6) are incorporated herein by reference as though set forth at length, and made an express part of this Agreement. If applicable, Seller will comply with the following Federal Acquisition Regulations: (i) 52.222-26 "Equal Opportunity", (ii) 52.222-35 "Affirmative Action for Special Disabled and Vietnam Veterans", (iii) 52.222-36 "Affirmative Action for Handicapped Workers."

25.3 Small Business Plan Requirements: NCC is a government contractor and is subject to the requirements of FAR section 52.219. Pursuant to FAR 52.219.9, if Seller (i) is not considered a Small Business (as the term is defined in section 3 of the Small Business Act) and (ii) is providing Goods or Services under this Agreement in an amount greater than or equal to \$500,000, and (iii) is subcontracting a portion of the Goods or Services from a third party, Seller agrees to submit to NCC a Small Business Plan or letter stating that Seller does not have a Small Business Plan and listing the approximate dollar amount to be subcontracted.

25.4 Hazardous Materials: If Goods include hazardous materials, Seller represents and warrants that Seller understands the nature of any hazards associated with the manufacture, handling and transportation of such hazardous materials

25.5 Customs: Upon NCC's request, Seller will promptly provide NCC with a statement of origin for all Goods and United States Customs documentation for Goods wholly or partially manufactured outside of the United States.

26. INJUNCTIVE RELIEF.

Seller acknowledges and agrees that the obligations and promises of Seller under this Agreement are of a unique, intellectual nature giving them particular value. Seller's breach of any of the promises contained in this Agreement will result in irreparable and continuing damage to NCC for which there will be no adequate remedy at law and, in the event of such breach, NCC will be entitled to seek injunctive relief, or a decree of specific performance.