

NAP's Standard Terms & Conditions for Co-Packing, Blending, Packaging, Storage & Related Services

Effective Date: January 1, 2025

Applies to: All North American Packaging LLC ("**NAP**") facilities and engagements in the United States.

Audience: Business customers only (not for consumer use).

These Standard Terms & Conditions ("**T&Cs**") govern all co-packing, blending, packaging, labeling, warehousing, storage, handling, reconditioning, disposal, and related services that NAP provides to any customer ("**Customer**"). The T&Cs are incorporated by reference into any letter agreement, service sheet, quotation, order acknowledgment, schedule, or other agreement between NAP and Customer (collectively, the "**Agreement**"). If Customer places orders without an executed Agreement, these T&Cs and NAP's written acknowledgment form the contract.

If there is any conflict among documents, the following order applies unless NAP expressly agrees otherwise in a writing signed by NAP: (1) an explicit override in a countersigned Agreement front sheet or letter agreement; (2) these T&Cs; (3) executed schedules; (4) NAP's order acknowledgment; (5) Customer purchase orders (administrative details only; no legal terms apply).

A. Definitions

- **Customer-Supplied Materials:** any raw materials, chemicals, additives, dyes, packaging, labels, pallets, roll stock, forms, artwork, and other inputs supplied or specified by Customer.
- **Products:** finished goods packaged by NAP for Customer.
- **Specifications:** written, mutually agreed requirements for Products/Services (blends, tolerances, weights at time of pack, labeling, palletization, QA/QC plans, AQLs, COAs), as set in the Agreement/schedules or later co-signed updates.
- **Business Day:** a day NAP's relevant facility is open (excluding weekends and federal holidays unless otherwise agreed).

B. Scope; Incorporation; Non-Applicability of Customer Terms

1. These T&Cs apply to all Services and related deliverables performed or provided by NAP.
 2. Any Customer terms (on POs, portals, vendor guides, or otherwise) are rejected and have no effect unless NAP expressly accepts them in a writing signed by NAP. Shipment, partial performance, or silence is not acceptance of Customer terms.
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C. Forecasts; Orders; Minimums; Changeovers

1. **Forecasts.** Customer will provide a rolling six-month forecast, updated monthly; forecasts are planning tools only.
 2. **Orders.** Each PO must specify SKUs, quantities, ship-to, and requested ship date. NAP may reject or propose revised dates if capacity, materials, safety, or Specifications are at risk.
 3. **Minimums/Run Sizes.** NAP may set minimum order quantities, economic order quantities, and standard batch/run sizes by SKU. Non-standard or short runs may carry setup/changeover charges.
 4. **Expedites.** If accepted, expedites are subject to premium charges.
 5. **No Conflicting Terms.** Conflicting PO terms are void.
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D. Specifications; Change Control; Label Content/Claims

1. **Compliance to Spec.** NAP will produce Products in conformance with the Specifications applicable at the time of the run.
 2. **Changes.** No change is binding unless both parties sign. Customer bears all incremental costs, scrap, obsolete components, and timing impacts arising from Customer-initiated changes.
 3. **Labeling & Claims.** Customer is solely responsible for label content/claims (e.g., performance, environmental, safety), barcodes, and required warnings (including any California Prop 65 or analogous requirements), and for regulatory compliance of its labels and marketing. NAP's role is mechanical execution; NAP does not review or approve claims. Customer will defend and indemnify NAP against any claim or regulator action related to label content/claims.
 4. **Samples/Golden Units.** If used, Customer will supply signed master samples; comparisons are against Specifications and any approved samples.
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E. Customer-Supplied Materials; SDS; Hazard; No Shrinkage Responsibility

1. **Supply & Title.** Unless otherwise stated, Customer will procure and deliver Customer-Supplied Materials DDP NAP facility. Title to Customer-Supplied Materials and finished Products remains with Customer at all times (subject to NAP's lien rights in § L.4).
2. **SDS/Hazard.** Before shipping any hazardous or regulated materials, Customer must provide current SDS, classifications, handling/storage/segregation requirements and promptly update any changes. Misclassification is Customer's risk.
3. **Inspection/Quarantine.** NAP may visually inspect inbound materials and may quarantine or reject damaged, contaminated, improperly labeled, or non-conforming materials. NAP has no obligation to test beyond the agreed QC plan.
4. **No Shrinkage Responsibility. Any loss, shortage, variance, or "shrinkage" of Customer-Supplied Materials or finished Products—arising from handling, transfer, blending, packaging, storage, settling, compaction, evaporation, moisture absorption/desorption,**

measurement variance, customary sweepings, waste, degradation, or other ordinary-course causes—is at Customer’s risk and cost. NAP has no responsibility, duty, or liability for any shrinkage under any legal theory, and pricing assumes Customer bears all shrinkage risk.

- For clarity: (i) NAP does not guarantee mass/volume conservation through industrial processes; (ii) NAP is not an insurer or bailee against shrinkage; (iii) post-shipment weight/volume changes due to environmental or time-based effects are not non-conformances.
 - This does not expand NAP’s liability; it only clarifies that shrinkage is never a recoverable loss.
5. **Special Storage.** Special measures (e.g., climate control, indoor-only storage, tarp-free restrictions) apply only if expressly agreed in writing; incremental charges apply.
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F. Production; Quality; Acceptance; Exclusive Remedies

1. **Standards.** NAP will operate under its SOPs, HSE policies, and good industry practice for chemical blending/packaging.
 2. **Quality Plan.** The parties will agree a written Quality & Acceptance Plan covering sampling, in-process checks, finished-goods tests, AQLs, retains, and documentation. If Customer fails to provide methods/tolerances, NAP’s standard tolerances and AQLs apply.
 3. **Certificates/Records.** Where agreed, NAP will issue COAs/COCs per lot and maintain batch/lot traceability for at least three (3) years or longer if required by law.
 4. **Inspection & Notice.** Customer shall inspect on receipt. Claims for patent defects must be notified within fourteen (14) days of delivery; latent defects within the earlier of ninety (90) days of delivery or shelf-life end, and in any case not later than one hundred eighty (180) days after delivery. Failure to notify timely constitutes acceptance.
 5. **Exclusive Remedies.** For proven non-conforming Products (i.e., failing to meet Specifications at shipment due to NAP), Customer’s sole and exclusive remedies are, at NAP’s election: **(a) repair/rework; (b) replacement; or (c) credit/refund of the price paid for the affected units.** Customer shall segregate and hold affected Products for NAP inspection; return/disposal requires NAP authorization.
 6. **Exclusions.** NAP is not responsible for issues caused by (a) Customer-Supplied Materials; (b) Customer’s Specifications or instructions; (c) transport/storage after risk transfer; (d) mixing with other products; (e) age beyond shelf life; (f) environmental exposure (e.g., moisture/humidity causing caking) unless special storage was expressly contracted.
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G. Recalls; Withdrawals; CAPA

1. **Notification.** A party aware of an issue potentially requiring recall/withdrawal shall promptly notify the other.

2. **Control.** Customer controls market withdrawals/recalls for its branded Products; NAP controls recalls limited to NAP-owned processing defects where Customer branding is not implicated.
 3. **Cost Allocation.** Costs are borne by the party responsible for the root cause, or shared proportionally where both contributed, **subject always to § K (Limits of Liability).**
 4. **CAPA.** The parties will cooperate on investigations and corrective/preventive actions; reasonable access to relevant records will be provided subject to confidentiality.
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H. Storage; Warehouse Terms; Abandonment; No Bailment

1. **Storage.** Finished goods and inputs may be stored at NAP using standard warehouse practices or as specified in schedules. **Outdoor storage may be used unless "indoor only" is specified.** Cosmetic/weathering effects from outdoor storage are not NAP's responsibility.
 2. **Charges.** Storage rates are as stated in the Agreement or NAP's then-current tariff. Off-season and carryover storage may carry higher rates.
 3. **Abandonment.** If goods remain sixty (60) days after contract termination or any past-due charges, NAP may deem them abandoned after at least twenty (20) days' written notice to cure/remove and may sell, recycle, or dispose of them at Customer's cost; net proceeds, if any, reduce amounts owed.
 4. **No Bailment; Lien.** NAP is **not** a bailee or insurer. NAP has a contractual and **UCC warehouseman's lien** on all goods in its possession for unpaid charges, storage, and costs, and may exercise sale/disposal remedies after notice per law.
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I. Health, Safety, Environment (HSE); Site Rules

1. **Compliance.** Each party will comply with applicable HSE laws (OSHA, DOT HazMat, environmental, fire code). Customer is responsible for accurate classification/SDS for its materials and Products.
 2. **Site Rules.** All Customer personnel and carriers at NAP sites must follow NAP safety rules, PPE, check-in protocols, and directions. NAP may refuse entry or stop work for safety.
 3. **Spills/Incidents.** Spills or releases involving Customer's materials are Customer's responsibility unless caused solely by NAP's gross negligence or willful misconduct.
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J. Delivery; Risk of Loss; Allocation

1. **Delivery Terms.** Unless otherwise stated, shipments are FOB NAP facility; risk of loss transfers upon loading to Customer's carrier at NAP's dock.

2. **Carriers/Appointments.** Customer schedules carriers with required notice and provides BOLs. Missed appointments/detentions may incur fees.
 3. **Allocation.** In shortages or force majeure, NAP may allocate capacity fairly among customers.
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K. Limits of Liability; Damages Exclusions; Time Bar

1. OVERALL CAP (LESSER-OF). NAP'S TOTAL AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY KIND ARISING OUT OF OR RELATING TO THE AGREEMENT, THE T&CS, THE SERVICES, OR THE PRODUCTS IN ANY ROLLING TWELVE (12)-MONTH PERIOD SHALL NOT EXCEED THE LESSER OF: (A) THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO NAP FOR SERVICES DURING THAT PERIOD; OR (B) USD \$100,000.00 (ONE HUNDRED THOUSAND UNITED STATES DOLLARS)
 2. PER-CLAIM CAP FOR PRODUCT ISSUES. FOR ANY CLAIM RELATING TO NON-CONFORMING PRODUCTS, NAP'S LIABILITY IS ADDITIONALLY CAPPED AT AN AMOUNT NO GREATER THAN THE PRICE PAID FOR THE AFFECTED UNITS (I.E., NO RECOVERY BEYOND THE PURCHASE PRICE OF THE SPECIFIC GOODS IN DISPUTE).
 3. EXCLUSION OF CERTAIN DAMAGES. IN NO EVENT IS EITHER PARTY LIABLE TO THE OTHER FOR INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, COVER, OR RECALL-RELATED LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY.
 4. CARVE-OUTS. THE CAPS/EXCLUSIONS DO NOT LIMIT: (I) CUSTOMER'S PAYMENT OBLIGATIONS; (II) CUSTOMER'S INDEMNITY OBLIGATIONS UNDER § M.1; (III) A PARTY'S LIABILITY FOR ITS OWN FRAUD OR WILLFUL MISCONDUCT. (GROSS NEGLIGENCE IS NOT A CARVE-OUT UNLESS SPECIFICALLY REQUIRED BY NON-WAIVABLE LAW.)
 5. TIME BAR. ANY CLAIM AGAINST NAP MUST BE BROUGHT WITHIN ONE (1) YEAR AFTER ACCRUAL.
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L. Pricing; Pass-Throughs; Taxes; Payment; Suspension; Setoff; Lien

1. **Pricing.** As per the Agreement or quotation; exclusive of taxes, duties, or third-party charges unless stated.
2. **Annual Review & Pass-Throughs.** Unless otherwise agreed, NAP may adjust labor- and energy-sensitive rates annually by the greater of three percent (3%) or CPI-U and implement extraordinary pass-throughs for material changes in minimum wage laws, utilities, fuel, or regulatory costs on thirty (30) days' notice.
3. **Taxes.** Customer pays applicable transaction taxes; valid exemption certificates must be provided in advance.
4. **Invoicing & Terms.** Invoices issue upon shipment or weekly for services; payment due net thirty (30) days from invoice date; late amounts accrue interest at **1.5% per month** (or the maximum allowed by law).

5. **Security & Suspension.** NAP may require prepayment, deposits, letters of credit, or other security and may suspend Services or withhold shipments for overdue accounts or deteriorated credit.
 6. **No Setoff by Customer.** Customer may not withhold, set off, or net amounts owed to NAP against other claims.
 7. **NAP Setoff; Lien.** NAP may set off amounts NAP or its affiliates owe Customer against any amounts Customer owes NAP or its affiliates. NAP's UCC warehouseman's lien applies per § H.4.
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M. Indemnification

1. **By Customer (Broad).** Customer shall **defend, indemnify, and hold harmless** NAP, its affiliates, and their directors, officers, employees, and agents from and against any and all third-party claims, demands, suits, losses, damages, fines, penalties, costs, and expenses (including reasonable attorneys' fees) arising out of or related to:
 - (a) Customer-Supplied Materials (including misclassification, hidden hazards, contamination);
 - (b) Customer's Specifications, instructions, designs, or label/advertising content/claims;
 - (c) Customer's breach of law or contract;
 - (d) property damage, personal injury, death, or environmental releases caused by Customer or its carriers;
 - (e) IP infringement based on Customer IP, designs, or instructions.
 2. **By NAP (Narrow).** NAP will defend, indemnify, and hold harmless Customer from third-party claims to the extent **finally determined** to arise directly from NAP's willful misconduct in performing the Services.
 3. **Procedures.** The indemnified party shall promptly notify and allow the indemnifying party to control the defense; the indemnified party may participate at its own cost. No settlement imposing non-monetary obligations on the indemnified party without its consent.
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N. Warranties; Disclaimers; Sole Remedies

1. **Services Warranty.** NAP warrants Services will be performed in a professional and workmanlike manner and Products will conform to Specifications **at the time of shipment.**
 2. **Disclaimer.** EXCEPT AS EXPRESSLY STATED IN § N.1, **NAP DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.** NAP does not warrant label/marketing claims, regulatory compliance of labels, shelf life, field performance, or suitability for any particular use.
 3. **Sole Remedies.** Customer's remedies are limited to those in § F.5 and the caps in § K.
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O. Audits; Access

1. **Audits.** Up to two (2) audits per rolling twelve (12) months (and for cause), during business hours with at least five (5) Business Days' notice, under supervision, subject to safety and confidentiality. No photography or copying of proprietary materials without NAP's written consent.
 2. **Costs.** Customer bears its own costs; extraordinary NAP support is billable at reasonable rates.
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P. Insurance

1. **Customer.** Customer shall maintain at its expense: (a) CGL **\$2,000,000** per occurrence/**\$2,000,000** aggregate, naming NAP as additional insured with **primary and non-contributory** status and **waiver of subrogation**; (b) Products/Completed Ops included; (c) Auto Liability **\$1,000,000**; (d) Workers' Comp/Employer's Liability per law and not less than **\$1,000,000**; (e) Umbrella/Excess **\$3,000,000** following form; (f) Contractors Pollution Liability **\$1,000,000** if applicable. Customer shall maintain property/cargo/inland marine coverage on its materials and Products while at NAP and in transit.
 2. **Certificates.** Provide certificates on request. Failure to maintain required insurance is a material breach.
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Q. Confidentiality; Data; Residuals

1. **Confidentiality.** Non-public business/technical information exchanged is confidential, used only to perform the Agreement, protected with at least reasonable care, and returned/destroyed on request (archival copies may be retained subject to confidentiality).
 2. **Residuals.** Unintended retention of general know-how and memories not containing specific confidential information does not violate this Section.
 3. **Data.** No special categories of personal data will be shared; each party maintains reasonable safeguards for business contact data.
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R. Intellectual Property

1. **Background IP.** Each party retains all right, title, and interest in its background IP and know-how.
2. **Customer Marks/Artwork.** Customer grants NAP a limited, revocable, non-exclusive, non-transferable license to use Customer's marks, artwork, and label files solely to perform the Services; Customer retains ownership of such assets.
3. **NAP Processes/Improvements.** NAP retains all rights in its processes, SOPs, manufacturing methods, and any improvements or optimizations made during

performance ("NAP Improvements"). No license is implied except as necessary to perform Services.

4. **Joint Development.** Any joint development will be governed by a separate signed agreement.
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S. Compliance; Trade Controls; Anti-Corruption

1. **Compliance.** Each party will comply with applicable laws, including anti-bribery (FCPA/UK Bribery Act), trade sanctions/export controls, antitrust, labor, and environmental.
 2. **Sanctions.** Customer represents it and its principals are not on sanctions/denied-party lists and will not cause NAP to violate sanctions/export controls.
 3. **Certifications.** Certifications reasonably related to the Services may be requested; broader audits are subject to § O.
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T. Term; Termination; Suspension; Transition

1. **Term.** As set in the Agreement; these T&Cs apply to all orders during the term.
 2. **Termination for Cause.** Either party may terminate for material breach not cured within thirty (30) days after written notice (ten (10) days for payment defaults).
 3. **Insolvency.** Either party may terminate immediately upon the other's insolvency, bankruptcy, or assignment for creditors.
 4. **Suspension.** NAP may suspend Services for safety concerns, legal violations, or non-payment.
 5. **Post-Termination.** Customer shall promptly pay all sums due, remove its materials and Products (subject to lien rights), and provide instructions for remaining goods; storage/disposal fees continue until removal or disposal.
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U. Dispute Resolution; Governing Law; Venue; Jury Waiver

1. **Good-Faith Negotiation.** The parties will attempt to resolve disputes through good-faith executive negotiation for at least fifteen (15) Business Days.
 2. **Governing Law.** New York law governs (conflict-of-laws rules excluded).
 3. **Venue.** Exclusive jurisdiction and venue lie in the state or federal courts located in **Albany County, New York**. Each party submits to personal jurisdiction there.
 4. **Jury Waiver. EACH PARTY WAIVES ANY RIGHT TO A JURY TRIAL.**
 5. **Injunctive Relief.** Either party may seek injunctive/equitable relief to protect confidentiality or IP.
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V. Notices

Written notices by hand, overnight courier, or email with confirmation to the addresses in the Agreement (or as updated by notice). Notices are effective on receipt (for email, when sent without bounce and followed by courier copy).

W. Assignment; Subcontracting; Affiliates

1. **Assignment.** Customer may not assign without NAP's prior written consent, except to an affiliate or successor in a sale of substantially all relevant assets/business (notice required; assignee must assume obligations). Any prohibited assignment is void.
 2. **Subcontracting.** NAP may subcontract any portion of the Services (including transport, reconditioning, and storage) and remains responsible for its subcontractors.
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X. Publicity

No party will use the other's name or marks in publicity without prior written consent (other than neutral customer lists or as required by law).

Y. Amendments; Online Updates; Entire Agreement

1. **Amendments.** These T&Cs may be updated by NAP at any time by posting a revised version at this webpage with an updated Effective Date. For existing customers, updates will apply to orders placed **on or after** the Effective Date. **Continued ordering after the Effective Date constitutes acceptance.**
 2. **Entire Agreement.** The Agreement and these T&Cs are the entire agreement and supersede prior discussions and writings on the subject.
 3. **Severability.** If any provision is unenforceable, it will be modified to the minimum extent necessary; the remainder remains in effect.
 4. **No Waiver.** Failure to enforce is not a waiver.
 5. **Force Majeure.** Neither party is liable for delays/failures due to events beyond reasonable control (including acts of God, epidemics, strikes, fires, floods, explosions, riots, war/terror, cyberattacks, supply interruptions, or government actions). The affected party will notify, mitigate, and resume performance; allocations may apply.
 6. **Counterparts/E-Signatures.** If and to the extent signatures are collected online or by e-signature, they are valid and binding.
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Questions about these Terms?

Contact: Legal@CarverCompanies.com

End of Document