

# CLUSTERTRUCK

## Terms of Use

### Acceptance of the Terms of Use

These terms of use are entered into by and between You and ClusterTruck, Inc. and its subsidiaries and affiliates ("**Company**", "**we**" or "**us**"). The following terms and conditions, together with any documents expressly incorporated by reference (collectively, these "**Terms of Use**"), govern your access to and use of [clustertruck.com](https://clustertruck.com) including any content, functionality, and services offered on or through [clustertruck.com](https://clustertruck.com) (the "**Website**") or desktop, mobile, other applications owned and/or operated by us (the "**Application**" or collectively, the "**Applications**"), whether as a guest or a registered user.

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foregoing eligibility requirements. If you do not meet these requirements, you must not access or use the Website or Applications.

### **Changes to the Terms of Use**

We may revise and update these Terms of Use from time to time in our sole discretion. All changes are effective immediately when we post them and apply to all access to and use of the Website and Applications thereafter. However, any changes to the dispute resolution provisions set out in [Governing Law and Jurisdiction](#) will not apply to any disputes for which the parties have actual notice on or before the date the change is posted on the Website or in the Applications.

Your continued use of the Website or Applications following the posting of revised Terms of Use means that you accept and agree to the changes. You are expected to check this page from time to time so you are aware of any changes, as they are binding on you.

### **Accessing the Website or Applications and Account Security**

We reserve the right to withdraw or amend this Website and the Applications, and any service or material we provide on or through the Website or Applications, in our sole discretion without notice. We will not be liable if for any reason all or any part of the Website or the Applications is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the Website and/or Applications, or the entire Website and/or Applications, to users, including registered users.

You are responsible for: (1) making all arrangements necessary for you to have access to the Website or Applications; and (2) ensuring that all persons who access the Website or Applications through your internet

connection are aware of these Terms of Use and comply with them.

To access the Website or Applications, you may be asked to provide certain registration details or other information. It is a condition of your use of the Website or Applications that all the information you provide on the Website or through an Application is correct, current, and complete. You agree that all information you provide to register with this Website or an Application or otherwise, including but not limited to through the use of any interactive features on the Website or Applications, is governed by our Privacy Policy ([clustertruck.com/privacy](https://clustertruck.com/privacy)) and you consent to all actions we take with respect to your information consistent with our Privacy Policy.

If you choose, or are provided with, a user name, password, or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to the Website and/or Applications or portions of it using your user name, password, or other security information. You agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer or other device so that others are not able to view or record your password or other personal information.

We have the right to disable any user name, password, or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our opinion, you

have violated any provision of these Terms of Use.

## **Intellectual Property Rights**

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Use the Website or Applications in any manner that could disable, overburden, damage, or impair the site or interfere with any other party's use of the Website or Applications, including their ability to engage in real time activities through the Website or Applications.

Use any robot, spider, or other automatic device, process, or means to access the Website or Applications for any purpose, including monitoring or copying any of the material on the Website or Applications.

Use any manual process to monitor or copy any of the material on the Website or Applications or for any other unauthorized purpose without our prior written consent.

Use any device, software, or routine that interferes with the proper working of the Website or Applications.

Introduce any viruses, trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful.

Attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the Website or Applications, the server on which the Website or Applications are stored, or any server, computer, or database connected to the Website or Applications.

Attack the Website or Applications via a denial-of-service attack or a distributed denial-of-service attack.

Otherwise attempt to interfere with the proper working of the Website or Applications.

### **Changes to the Website or Applications**

We may update the content on the Website or Applications from time to time, but its content is not necessarily complete or up-to-date. Any of the material on the Website or in the Applications may be out of date at any given time, and we are under no obligation to update such material.

### **Information About You and Your Visits to the Website or Use of Applications**

All information we collect on this Website or through the Applications is subject to our Privacy Policy ([clustertruck.com/privacy](https://clustertruck.com/privacy)). By using the Website and/or Applications, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

### **Online Purchases**

All purchases through our site or other transactions for the sale of goods formed through the Website or Applications are governed by our Terms of Use. You agree that your order through the Website or an Application is an offer to buy, under these terms, all products and services listed in your order. All orders must be accepted by us or we will not be obligated to sell the products or services to you. We may choose not to accept any orders in our sole discretion. After having received your order, we will send you a confirmation email with your order number and details of the items you have ordered. Acceptance of

your order and the formation of the contract of sale between Company and you will not take place unless and until you have received your order confirmation e-mail. You have the option to cancel your order at any time by emailing [customerservice@clustertruck.com](mailto:customerservice@clustertruck.com).

All prices posted on the Website or in the Applications are subject to change without notice. The price charged for a product or service will be the price in effect at the time the order is placed and will be set out in your order confirmation e-mail. Price increases will only apply to orders placed after such changes. Posted prices do not include taxes or charges for shipping and handling. All such taxes and charges will be added to your merchandise total and will be itemized at checkout and in your order confirmation e-mail. We are not responsible for pricing, typographical, or other errors in any offer by us and we reserve the right to cancel any orders arising from such errors.

Terms of payment are within our sole discretion and, unless otherwise agreed by us in writing, payment must be received by us before our acceptance of an order. We accept most major credit cards for payment for all purchases. You represent and warrant that (i) the credit card information you supply to us is true, correct, and complete, (ii) you are duly authorized to use such credit card for the purchase, (iii) charges incurred by you will be honored by your credit card company, and (iv) you will pay charges incurred by you at the posted prices, including all applicable taxes, if any.

### **Shipments and Delivery**

We will arrange for shipment of our products to you. You will pay all shipping and handling charges specified during the ordering process.



Title and risk of loss pass to you upon our transfer of the products to the carrier. Shipping and delivery times are estimates only and cannot be guaranteed. We are not liable for any delays in shipments.

## **Loyalty Programs**

Company may, in its sole discretion, create loyalty programs that reward you with points or credits for qualifying purchases (“Credits”) and/or promotional codes (“Promo Codes”) that may be redeemed on future purchases. You agree that any Credits or Promo Codes: (i) must be used for the intended purpose, and in a lawful manner; (ii) may not be duplicated, sold or transferred in any manner, or made available to the general public unless expressly permitted by Company; (iii) may be disabled by Company, at any time for any reason without liability to Company; (iv) may only be used pursuant to the specific terms that Company establishes for such Credits or Promo Code; (v) are not valid for cash; and (vi) may expire prior to your use. Company reserves the right to withhold or deduct Credits or other features or benefits obtained through the use of the Credits or Promo Codes by you or any other user in the event that Company determines or believes that the use of or redemption of the Credits or Promo Codes was in error, fraudulent, illegal, or in violation of Company’s Terms of Use. Company may change or terminate any loyalty program, Credit, or Promo Code, with or without notice, even though any such change or termination may affect your ability to redeem accumulated Credits or Promo Codes.

## **SMS**

If you sign up for marketing alerts via text message (“SMS Messages”),

you may receive text messages regarding deals, discounts and/or Promo Codes from the Company. By subscribing to SMS Messages, you consent to receiving approximately four (4) SMS Messages per month using automated technology. You represent that you are the owner or authorized user of the device that you used to subscribe for the service, and that you are authorized to approve the applicable charges that may apply. Your consent to receive SMS Messages is not required to make a purchase from the Company.

You can unsubscribe at any time by texting STOP to opt out. Text HELP for support, or email [help@clustertruck.com](mailto:help@clustertruck.com). Your carrier's standard messaging and/or data rates may apply. Participating carriers include: Ntelos, Cellcom, Cellsouth, Carolina West, AT&T, MetroPCS, T-Mobile, U.S. Cellular, Sprint, Google Voice, Boost, Virgin Mobile and Verizon Wireless.

Company is not liable for any delays or failures in your receipt of any SMS Messages as delivery is subject to effective transmission from your network operator and processing by your mobile device. The SMS Messages service is provided on an AS IS, AS AVAILABLE basis.

### **Geographic Restrictions**

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### **Limitation on Liability**

TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL THE COMPANY, ITS SUBSIDIARIES, AFFILIATES, AND ITS AND THEIR SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, SUCCESSORS OR ASSIGNS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE

WEBSITE OR APPLICATIONS, ANY CONTENT ON THE WEBSITE AND/OR THE APPLICATIONS, INCLUDING ANY CREDITS OR PROMO CODES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF USE, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

### **Indemnification**

You agree to defend, indemnify, and hold harmless the Company, its subsidiaries, affiliates, service providers, and its and their respective officers, directors, employees, shareholders, contractors, agents, licensors, suppliers, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees including reasonable attorneys' fees arising out of or relating to your violation of these Terms of Use or your use of the Website or the Applications, including any use of the Website or Applications' content, services, Credits or Promo Codes, and products other than as expressly authorized in these Terms of Use or your use of any information obtained from the Website or Applications.

### **Governing Law and Jurisdiction**

All matters relating to the Website, Applications and these Terms of Use and any dispute or claim arising therefrom or related thereto in each case, including non-contractual disputes or claims, shall be

governed by and construed in accordance with the internal 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.

Any legal suit, action, or proceeding arising out of, or related to, these Terms of Use, the Website or Applications shall be instituted exclusively in the federal courts of the United States or the courts of the State of Indiana in each case located in the City of Indianapolis and County of Marion although we retain the right to bring any suit, action, or proceeding against you for breach of these Terms of Use in your country of residence or any other relevant country. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

### **Limitation on Time to File Claims**

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF USE OR THE WEBSITE OR THE APPLICATIONS, OR USE OF THE CREDITS OR PROMO CODES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

### **Waiver and Severability**

No waiver of by the Company of any term or condition set out in these Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of the Company to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision.

If any provision of these Terms of Use is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms of Use will continue in full force and effect.

### **Entire Agreement**

The Terms of Use and our Privacy Policy constitute the sole and entire agreement between you and Company regarding the Website and/or Applications and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the Website and the Applications.

### **Your Comments and Concerns**

The Website and the Applications are operated by ClusterTruck, Inc. with offices located at 729 N. Pennsylvania St., Indianapolis, IN 46204. All other feedback, comments, requests for technical support, and other communications relating to the Website or Applications should be directed to:

[generalcounsel@clustertruck.com](mailto:generalcounsel@clustertruck.com).