

## 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 including any content, functionality, and services offered on or through 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.

Please read the Terms of Use carefully before you start to use the Website or Applications. **By using the Website and/or Applications you accept and agree to be bound and abide by these Terms of Use and our Privacy Policy, found at [clustertruck.com/privacy](https://clustertruck.com/privacy), incorporated herein by reference.** If you do not want to agree to these Terms of Use or the Privacy Policy, you must not access or use the Website or Applications. This Website and the Applications are offered and available to users who are 13 years of age or older. You affirm that you are either more than 13 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of Use, and to abide by and comply with these Terms of Use. By using the Website and/or Applications, you represent and warrant that you meet the 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 with Company (your “ClusterTruck 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 ClusterTruck Account at the end of each session. You should use particular caution when accessing your ClusterTruck 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. You are the sole authorized user of any account you create to access the Website and/or Applications. You are solely and fully responsible for all activities that occur under your password or ClusterTruck Account.

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**

The Website, Applications and the entire contents, features, and functionality including but not limited to all information, software, text, displays, images, video, and audio, and the design, selection, and arrangement thereof, are owned by the Company and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws.

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## **Trademarks**

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## **Prohibited Uses**

You may use the Website and/or Applications only for lawful purposes and in accordance with these Terms of Use. You agree not to use the Website or Applications in any way that violates any applicable federal, state, local, or

international law or regulation including, without limitation, any laws regarding the export of data or software to and from the US or other countries. Additionally, you agree not to:

- Use the Website or Applications in any manner that could disable, overburden, damage, or impair the Website or Applications 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.

#### **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.

#### **Payment**

Certain features of the Website and Applications, including, without limitation, the placing or receipt of orders, may require you to make certain payments, including commissions or other fees. When paid by you, these payments are final and non-refundable, unless otherwise determined by Company. Company, in its sole discretion, may offer credits or refunds on a case-by-case basis including, by way of example, in the event of an error with your order or in the amounts you were charged. 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, or you have received a confirmation on the Website or within the Application. You have the option to cancel your order at any time by electing to cancel the order on the Website, within the Application, or emailing [help@clustertruck.com](mailto:help@clustertruck.com).

Company will charge, and you authorize Company to charge, in connection with a third party payment processor, the payment method you specify at the time of purchase. If you pay any amounts with a credit card, Company may seek pre-authorization of your credit card account prior to your purchase to verify that the credit card is valid and has credit available for your intended purchase.

Company reserves the right to establish, remove, and/or revise prices, fees, taxes, and/or surcharges for any or all services or goods obtained through the use of the Website, Applications, or other services at any time, and further reserves the right to consolidate or otherwise incorporate fees and/or surcharges into the prices listed for items. For certain transactions, the subtotals shown at checkout are estimates that may be higher or lower than the total amount due. Regardless of the cause, Company reserves the right to charge the final price after checkout, including without limitation all applicable transaction taxes. Company may also, in its sole discretion, make Credits, Promo Codes, rewards through Loyalty Programs or other promotional offers with different features and different rates available to any or all of our users. Unless made available to you, these Credits, Promo Codes, rewards through the Loyalty Program or other promotional offers will have no bearing on your obligation to pay the amounts charged. For more information on these offers,

please see the "Loyalty Programs" section below. 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.

### Account Balances

Company may load a dollar value onto your ClusterTruck Account for use in transactions with the Company (the "Account Balance"). The Account Balance will be maintained and deposited with a third-party payment processor, Stripe, accordingly the applicable terms and policies of Stripe shall apply, the policies of Stripe can be found on their website <https://stripe.com/>. **It is your responsibility to review the terms of use for third party entities, including those that may link or be accessible from or on the Website, Applications, or services, or in connection with Company.** The dollar value in your Account Balance is a credit to be used towards the goods and services of the Company. Unless otherwise required by law or permitted by these Terms of Use, the dollar value in your Account Balance is nonrefundable and may not be redeemed for cash. The value in your Account Balance is not insured by the Federal Deposit Insurance Corporation (FDIC), and it does not earn interest. All amounts in your Account Balance are denominated in the currency of the United States of America.

Account Balances are not targeted towards, nor intended for use by, anyone under the age of 13. If you are between the ages of 13 and 18, you may only use Account Balances under the supervision of a parent or legal guardian who agrees to be bound by these Terms of Use.

You should maintain strict privacy of your Account Balance and not disclose your account information to anyone. If your ClusterTruck Account information is lost or stolen, anyone who obtains possession of it may use your Account Balance. You are responsible for all transactions involving your Account Balance, including unauthorized transactions.

### 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 (each, a "Loyalty Program", collectively, "Loyalty Programs"). You agree that any Credits or Promo Codes may only be used pursuant to the specific terms that Company establishes for such Credits or Promo Codes; and the Credits or Promo Codes must be used for the intended purpose, and in a lawful manner.

There are no participation or membership fees associated with Loyalty Programs. Credits and Promo Codes accrued in connection with Loyalty Programs are promotional, have no cash value and cannot be redeemed for cash. In addition, your redemption of Credits and/or Promo Codes accrued in connection with a Loyalty Program cannot be combined with any other offers or discounts, unless otherwise expressly indicated by Company.

Your Credits and/or Promo Codes rewarded in connection with a Loyalty Program and your ClusterTruck Account are personal to you and may not be duplicated, sold, transferred or assigned to, or shared with the general public, family, friends or others, or used by you for any commercial purpose. You may have only one (1) ClusterTruck Account that is personal to you.

Without notice to you, Company reserves the right to suspend, without, or deduct Credits or other features or benefits obtained through the use of any Loyalty Program registered to your ClusterTruck Account and/or terminate your ClusterTruck Account and/or your participation in the Loyalty Program if Company determines, in its sole discretion, that you have violated these Terms of Use or that your use of Loyalty Program rewards is unauthorized, deceptive, fraudulent or otherwise unlawful. Company may, in its sole discretion,

suspend, cancel or combine Loyalty Program accounts that appear to be duplicative. In the event that your participation in Loyalty Program is terminated, all accrued rewards in your ClusterTruck Account are void.

Without notice to you, Company also reserves the right to “unregister” and make ineligible for the Loyalty Program any ClusterTruck Account that has been inactive for two (2) consecutive years. Inactivity is defined as no rewards earned during such two (2) consecutive year period. In the event that your ClusterTruck Account is unregistered or rendered inactive, all accrued rewards in your ClusterTruck Account are void.

Company may change or terminate any Loyalty Program, Credits, or Promo Codes, with or without notice, even though any such change or termination may affect your ability to redeem accumulated Credits or Promo Codes. Credits and/or Promo Codes may expire prior to your use.

## 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.

## Third Party Content

You may find links to other Internet sites or resources on the Website, Applications, or the services. You acknowledge and agree that Company is not responsible for the availability of such external sites or resources and does not endorse and is not responsible or liable for any of the content, advertising, products, or other materials on or available from such sites or resources. Company will not be responsible or liable, directly or indirectly, for any actual or alleged damage or loss caused by or in connection with use of or reliance on any such third party content, goods or services available on or through any such site or resource. **It is your responsibility to review the terms of use for third party entities, including those that may link or be accessible from or on the Website, Applications, or services, or in connection with Company.**

## Geographic Restrictions

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## Disclaimer of Warranties

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TO THE FULLEST EXTENT PROVIDED BY LAW, THE COMPANY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE.

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

#### **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, YOUR CLUSTERTRUCK ACCOUNT, ACCOUNT BALANCE, ANY LOYALTY PROGRAMS, OR THE 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 129 E. Market St., Suite 700, 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).