



Last Updated: March, 2021

Business Terms and Conditions

The following Business Terms and Conditions (hereinafter, “Terms and Conditions”) constitute a legally binding contract between Mercury Business Services LLC and the Customer. These Terms and Conditions apply to all shipments and/or storage of Cargo for which Mercury makes arrangements for logistics or transportation, whether by air, water, rail, or motor carrier. These Terms and Conditions also apply to any other Services provided by Mercury. In the event Mercury renders Services and issues a document or enters into an executed agreement relating to the provision of Services that contains terms and conditions that vary from those set forth herein, the provisions in such other document/agreement shall govern to the extent of any conflict with these Terms and Conditions. Otherwise, the following Terms and Conditions shall govern any Services rendered by Mercury. These Terms and Conditions may be updated by Mercury at any time so please check <https://www.shipmercury.com/Docs/MercuryBusinessTerms.pdf> for the most current Terms and Conditions.

1. Definitions.

As used in these Terms and Conditions, the following definitions shall apply:

- (a) “Cargo” shall mean any goods, cargo, merchandise, raw materials, supplies, equipment, apparatus, products, or other property that relate to or are the subject of any Services rendered or to be rendered by, through, or under Mercury.
- (b) “Carrier” shall mean the applicable shipping party that ships Cargo.
- (c) “Mercury” shall mean Mercury Business Services LLC, its subsidiaries, related companies, agents and/or representatives.
- (d) “Customer” shall mean the person or entity for whom Mercury renders Service and any agents or representatives of that person or entity, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers, sellers, shipper’s agents, insurers and underwriters, break-bulk agents, and consignees. It is the responsibility of the Customer to provide notice and copy(s) of these Terms and Conditions to all such agents or representatives.
- (e) “Documentation” shall mean all information received directly or indirectly from Customer, whether in paper or electronic form.
- (f) “Force Majeure” shall mean and include, but is not limited to, flood, earthquake, storm, and other acts of God, fire, derailment, accident, strike, lockout, labor dispute, pandemic, explosion, war or other violence, insurrection, terrorism or terroristic threats, riot or other civil unrest, embargo, act or order of government or governmental agency, shortage of power or any cause that is beyond the reasonable control of Mercury or the Service Provider that accepts, handles, transports, stores, warehouses, and/or delivers Cargo, or otherwise provides Services.
- (g) “International Law” shall mean the following international conventions or statutes, as applicable and without limitation: the Convention for the Unification of Certain Rules Relating to International Carriage by Air, October



12, 1929 (“Warsaw Convention”), as amended; the Montreal Protocol No. 4, September 25, 1975 (“Montreal Protocol”); the Montreal Convention, May 28, 1999 (“Montreal Convention”); the International Convention for the Unification of Certain Rules Relating to Bills of Lading, August 25, 1924 (the “Hague Rules”); the Protocol to Amend the Hague Rules, February 23, 1968 (“Hague-Visby Rules”); the United States Carriage of Goods by Sea Act, 46 U.S.C. App. §§ 1300 et seq. (“COGSA”), and any other mandatory laws or international conventions that are applicable.

(h) “Ocean Transportation Intermediaries” (“OTI”) shall include an “ocean freight forwarder” and a “non-vessel operating carrier.”

(i) “Service” or “Services” shall mean all handling, freight forwarding, brokerage, transportation, logistics, warehousing, or other services relating to or involving the import, export, pick-up, handling, storage, warehousing, processing, packaging, transportation, and/or delivery of Cargo.

(j) “Service Providers” shall include, but is not limited to: couriers, motor carriers, rail carriers, ocean carriers, freight forwarders, brokers, OTIs, customs brokers, agents, warehousemen, and other contractors or subcontractors to whom Cargo is entrusted for the provision of Services relating to or involving the import, export, pickup, handling, storage, warehousing, processing, packaging, transportation, and/or delivery of Cargo, or who otherwise provide Services. For the avoidance of doubt, for small package delivery Services such Service Provider may act as the broker for Customer.

(k) “Site” shall mean the website, provided by Mercury to Customer when ordering Services including, but not limited to, www.shipmercury.com; myshipnow.shipmercury.com; and webtrak.shipmercury.com. Site shall also include any application program interfaces supplied to Customer by Mercury.

2. About Mercury.

Mercury maintains the following applicable licenses:

- Domestic and international air freight forwarder providing services as a duly certified Indirect Air Carrier, NE2004016, including the issuance of house air waybills for individual shipments, assembly, consolidation and arrangement of transportation of goods via direct air carriers, pursuant to exemptions at 49 U.S.C. §§ 13531 and 13506(8).
- Surface freight forwarder by the Federal Motor Carrier Safety Administration under Docket No. FF-10639-P to provide interstate ground transportation and related forwarding services;
- Interstate property broker, as defined by 49 U.S.C. § 13102(2) and 49 C.F.R. § 371.2(a) of the Regulations of the Federal Motor Carrier Safety Administration. (Note: Mercury’s sole service when acting as a property broker is to arrange for the transportation of Customer Cargo by motor or rail carriers only).

When performing any of the above referenced functions, Mercury acts as Customer’s agent solely for the purpose of performing duties in connection with the entry and release of goods, post entry services, the securing of export licenses, the filing of export documentation on behalf of the Customer and other dealings with government agencies. As to all other Services, Mercury acts as an independent contractor in performing Services.



3. Customer Responsibilities.

(a) Customer is responsible to ensure there is proper marking, packing, and labeling of Cargo so it will safely withstand ordinary mechanical handling in transit and be in compliance with all laws, regulations, and requirements which are applicable. Customer must provide proper shipping instructions and Documentation to enable Mercury and any Service Providers to safely and securely provide the Services. Customer warrants to Mercury that the description of all Cargo particulars, including, but not limited to, the weight, content, measure, quantity, quality, condition, marks, numbers, value and country or origin and destination are correct. Unless otherwise agreed in writing (electronic notification through the Site acceptable), Customer is responsible for proper loading and unloading of the Cargo onto Mercury's or Service Provider's equipment. **Customer shall indemnify and hold harmless Mercury from all fines, penalties, or damages resulting from Customer's breach of this provision.** Uncrated, unprotected or improperly packaged Cargo is handled on a "hold harmless" basis and liabilities will not be assumed by Mercury in the event of damage to any Cargo.

(b) Mercury accepts shipments on an outer-pack level and does not recount or inspect inner-packs or their internal contents unless it specifically agrees to do so as part of the Service. The internal content of the shipment is considered as "Said to Contain" (STC) and/or "Shipper Load and Count" (SLC). It is recommended that for high risk shipments such as high value or vulnerable commodities, Customer utilize tamper evident packaging or tape or other means to further protect the Cargo. Any disturbance to this tamper evident packaging or tape must be noted on the delivery receipt at the time of delivery.

(c) Customer shall comply with all applicable laws, customs requirements, and other governmental regulations of any country to, from, through, or over which the Cargo may be carried, including those relating to the packaging, carriage, or delivery of the Cargo, and Customer shall furnish such information and attach such documents to the waybill as necessary to comply with any of such laws, customs, and regulations. Customer is responsible to assign a customs broker for customs clearance, and in the absence of such assignment allows Mercury to make such assignment on Customer's behalf. Customer shall comply with, and is responsible for paying, all duties, taxes, fines, and expenses associated all requirements of customs, port, and other authorities. Customer is also solely responsible for all losses and damages incurred or suffered due to any illegal, incorrect, or insufficient marking, numbering, or addressing of the Cargo, or caused by Customer's failure to comply with any laws, customs regulations, port requirements, or other governmental regulations. **Mercury shall not be liable for loss, damage, delay, detention, storage or other expenses arising out of the Customer's failure to comply with any such laws, customs requirements, or regulations of any governmental authority.**

(d) Any article susceptible to damage by ordinary handling must be adequately protected by Customer by proper packing and must be marked or bear appropriate labels. If a container has been loaded or stuffed by or on behalf of Customer, Mercury is not liable for loss of or damage to Cargo caused by the manner in which a container was loaded or stuffed, nor is Mercury liable for any loss or damage to Cargo: (i) caused by the unsuitability of the Cargo for carriage in such container(s); (ii) caused by the unsuitability or defective condition of the container; or (iii) that would have been apparent upon reasonable inspection by Customer at or prior to the time when the container was loaded or stuffed. **Customer shall defend, indemnify and hold harmless Mercury from and against any loss, damage, claim, liability, or expense caused by or arising from Customer's failure to meet the requirements of this subsection or due to any of the matters described in (i)-(iii) above.**

(e) Unless otherwise disclosed in writing by Customer and accepted in writing by Mercury, Customer warrants that Cargo tendered or delivered to Mercury in furtherance of any Services does not contain or constitute hazardous materials or dangerous goods. Customer agrees to notify Mercury in advance of Customer's intent for Mercury to handle or transport any dangerous goods or hazardous material in any shipment, and agrees to properly classify and describe the Cargo, and to provide Mercury with all necessary or useful information for



the safe storage and handling of the Cargo, including, but not limited to, Material Safety Data Sheets and/or Product Safety Data Sheets. Customer represents that in the event any Cargo it tenders or causes to be tendered to Mercury is classified as dangerous goods by the International Air Transport Association or hazardous material by the United States Department of Transportation or another governmental agency, such items, when tendered to Mercury, shall be limited to materials and quantities authorized for air transportation (regardless of the routing or the mode by which the shipment is transported) and will be properly labeled, packaged and transportable under applicable rules, regulations, and laws of the federal, state and local jurisdictions and/or countries through which they are to be transported, as applicable. In the event Mercury has accepted, in its sole discretion, to provide Services related to hazardous materials or dangerous goods, the additional terms of Section 12 shall apply to such Services, in addition to the other terms stated in this Agreement.

(f) Customer agrees not to tender for transportation any Cargo which requires temperature control without giving prior written notice to Mercury and without first obtaining Mercury's written agreement to provide Services relating to such Cargo. Customer is responsible for providing Mercury with specific requirements for any temperature sensitive transportation of Cargo. Mercury is not liable or responsible for any loss of or damage to temperature sensitive Cargo arising from defects, derangement, breakdown, or stoppage of any temperature controlling machinery, equipment, plant, insulation, or apparatus.

(g) Any pricing or other sensitive commercial information provided by Mercury to Customer is proprietary to Mercury and shall be held in strict confidence by Customer, shall only be used by Customer in connection with Services to be provided to Customer by Mercury, and shall not be used for any other purposes or disclosed to third parties without Mercury's prior written consent. For the avoidance of doubt, Customer shall not disclose Mercury pricing to third parties.

(h) Customer's use of the Site shall be subject to the Terms of Use found at <https://www.shipmercury.com/Docs/MercuryWebsiteTermsOfUse.pdf>. The foregoing Terms of Use are hereby incorporated to these Terms and Conditions by this reference.

4. **Reliance on Information Furnished.**

(a) Customer is responsible for the accuracy of all information provided to Mercury including, but not limited to, Customer ensuring accurate information is entered when producing any customer-generated Mercury shipping labels through the Site. Customer is responsible to ensure all associated Documentation and declarations prepared and/or filed with the customs service, any government agency, and/or any third party are accurate. Customer will promptly advise Mercury of any errors, discrepancies, incorrect statements, or omissions on any declaration or Documents filed on Customer's behalf.

(b) Customer has an affirmative, non-delegable duty to disclose any and all information required to import, export or enter all Cargo. In preparing and submitting customs entries, export declarations, applications, Documentation, and/or export data to the United States and/or a third party, Mercury relies on the correctness of all Documentation and information furnished by Customer, whether in written or electronic form. **Customer shall indemnify and hold Mercury harmless from any and all claims asserted, and/or liability or losses incurred, due to Customer's failure to disclose information or due to any materially incorrect or false statement by Customer upon which Mercury reasonably relied.**

5. **Subcontracting.**

(a) Mercury may subcontract or broker any or all of the Services to be provided to, for, or at the request of Customer. Customer acknowledges and agrees that Mercury may arrange for or use third party Service Providers to provide the Services including, but not limited to, small package delivery services in which such Service Provider acts as the broker, such as Federal Express.



(b) Unless Services are performed by persons or firms engaged pursuant to express written instructions from the Customer, Mercury shall use reasonable care in its selection of third parties and in selecting the means, route and procedure to be followed in the handling, transportation, clearance and delivery of the shipment. Advice by Mercury that a particular person or firm has been selected to render Services with respect to the Cargo shall not be construed to mean that Mercury warrants or represents that such person or firm will render such Services, nor does Mercury assume responsibility or liability for any action(s) and/or inaction(s) of such third party Service Provider and/or their agents. Furthermore, Mercury shall not be liable for any delay or loss of any kind which occurs while Cargo is in the custody or control of a third party, including warehouse storage operators, or an agent of such third party. All claims in connection with the act or omission of a third party shall be brought solely against such party and/or its agents. In connection with any such claim, Mercury shall reasonably cooperate with the Customer in accordance with Mercury's Claims Processing Policy, to be provided to Customer upon request, and Customer shall be liable for any charges or costs incurred by Mercury relating thereto.

(c) Except as specified in writing by Customer and accepted in writing by Mercury, Mercury and any Service Provider retained by Mercury to provide Services may at any time, with or without notice to Customer, use any means of transport or storage whatsoever; load or carry the Cargo on any vessel; transfer the Cargo from one conveyance to another by any means of transport; unpack, remove, and/or repack any Cargo loaded or stuffed into any container; proceed at any speed and by any route; load and/or unload Cargo at any place; and take other actions within the discretion of Mercury and/or the Service Providers to perform or provide the Services.

(d) With regard to ocean transportation, Mercury and/or any Service Provider retained by or through Mercury has the right to permit the vessel to proceed without pilots, to tow or be towed, to be dry docked, to carry livestock, and to carry hazardous materials or dangerous goods. The Service Provider providing ocean Services has the right to store or carry the Cargo on deck or under deck without notice to Customer. **Mercury is not liable in any capacity for non-delivery, mis delivery, delay, or loss of or damage to Cargo due to a vessel's unseaworthiness.**

6. Limitations of Liability/Warranty Disclaimer.

(a) Customer agrees that Mercury's liability to Customer for Cargo lost or damaged shall be governed by the liability provisions contained in the International Law(s).

(b) For Services to which the International Law(s) do not apply, Mercury, subject to the other conditions and limitations of liabilities set forth in these Terms and Conditions, shall have a limitation of liability for any loss, damage or injury to shipments based on a released value of (i) U.S. \$20.00 per kilo for lost or damaged international air shipments, (ii) U.S. \$500.00 per container, shipping unit, or LCL for ocean shipments; (iii) U.S. \$0.50 per pound for domestic shipments in the United States or (iv) the greater of a) 22 Special Drawing Rights per kilo and b) US \$150; provided in no event shall Mercury's liability exceed the lowest of the Cargo's replacement cost, repair cost or constituted value. Notwithstanding anything to the contrary in the foregoing, Mercury shall have no liability for any loss, damage or injury caused by any of the following: nuclear activity (meaning nuclear reaction, nuclear radiation, or radioactive contamination, whether deliberate or accidental, controlled or uncontrolled or whether it contributed to or aggravated a covered loss or damage); terrorism; hidden or latent defects; asbestos (including loss or clean up caused by or resulting from asbestos or asbestos containing material); the presence, release, discharge or dispersal of pollutants; leakage, evaporation or shrinkage; chipping; denting; bruising; loss of weight; mechanical or electrical derangement; breakage of glass or similar fragile property containing panes of glass; scented property; products that are discolored, soured or changed in flavor; normal wear and tear or cosmetic denting, marring, chipping, or scratching to packaging; insufficient or unsuitable packaging material or preparation of goods being shipped; a defect or vice in the freight; voluntary



removal or disappearance of the Cargo whether by fraudulent scheme, trick, device or false pretense; or any Force Majeure event.

(c) Except as specifically set forth in these Terms and Conditions, Mercury makes no express or implied warranties in connection with its Services and all warranties, statutory, express, or implied, are disclaimed to the fullest extent permitted by law.

(d) Unless mandated by International Law(s), in no event shall Mercury (or any of Mercury's affiliates, officers, directors, employees, agents or assigns) ever be liable to Customer (or to any of Customer's affiliates, officers, directors, employees, agents, assigns, customers, clients, shippers, or consignees) for delay damages or for any consequential, incidental, punitive, special, exemplary, or indirect damages, including any damages for loss of reputation, lost profits, or loss of business or business opportunities, by virtue of any claim or cause of action asserted under any statute, in tort, pursuant to any contract, under common law, or otherwise, even if Mercury has been advised of the possibility of such damages.

(e) All lawsuits against Mercury for loss, damage, or injury to Cargo must be filed and properly served on Mercury within one (1) year from the date of delivery or the date of loss, whichever is earlier. Failure to file suit within the prescribed time period will preclude Customer from recovering any damages arising from or relating to the claim made the basis of the lawsuit.

7. Insurance/Claims for Loss or Damage to Cargo.

(a) Mercury is under no obligation to procure insurance on Customer's behalf. In all cases, Customer shall request insurance and pay all costs in connection with procurement of such insurance for Cargo. If insurance is requested by Customer, insurance will be effected with one or more insurance companies or other underwriters to be selected by Mercury. Any insurance placed shall be governed by the certificate or policy issued and will only be effective when accepted by such insurance companies and underwriters. Mercury does not undertake or warrant that insurance can or will be placed. Insurance cover procured by Mercury will be assessed at a rate negotiated between the parties separate from any freight charges. Shipments must be packaged to withstand the normal hazards of transportation for any claim to be valid.

(b) Mercury is not the Carrier and therefore does not reimburse for lost or damaged Cargo; however, Mercury may assist Customer in its facilitation of a claim for damaged or lost Cargo with the applicable Carrier, in accordance with Mercury's Claim Processing Procedure located at <https://www.shipmercury.com/Docs/MercuryClaimsProcessing.pdf>

8. Indemnification/Hold Harmless.

Except to the extent caused by Mercury's negligence or willful misconduct, Customer agrees to indemnify and hold Mercury and Mercury's affiliates, employees, officers, managers, directors, members, agents, and contractors (the "Mercury Parties") harmless from and against any actions, claims, causes of action, losses, liabilities, damages, penalties, fines, expenses, and costs (including attorneys' fees) caused by, arising from, or relating to: (i) the provision of Services; (ii) any act or omission of Customer which violates any laws of the United States, any state, or any country in which Services are rendered for or on behalf of Customer; (iii) Customer's negligence or willful misconduct; and/or (iv) Customer's breach of any of Customer's duties or responsibilities as described in these Terms and Conditions. In the event that any claim, suit or proceeding is brought against Mercury, it shall give notice in writing to the Customer by mail at its address on file with Mercury.



9. C.O.D. or Cash/Collect Shipments.

Mercury shall use reasonable care regarding written instructions relating to “Cash/Collect on Delivery (C.O.D.)” shipments, bank drafts, cashier’s and/or certified checks, letter(s) of credit, and other similar payment documents and/or instructions regarding collection of monies, but shall have no liability if the bank or consignee refuses to pay for the shipment.

10. Payment.

(a) Unless otherwise expressly agreed by Mercury in writing, all charges are payable in US dollars and are due and payable fifteen (15) days from the date of invoice. The compensation of Mercury for all its Services shall be included with and is in addition to the rates and charges of all Service Providers selected by Mercury to transport and deal with the Cargo and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by Mercury from carriers, insurers, and others in connection with the shipment.

(b) Upon Customer’s request Mercury may, in its sole discretion, advance on the Customer’s behalf freight charges, storage charges, customs duties and/or other related charges. For each such advancement of charges, a service fee shall apply at Mercury’s then current rates.

(c) Mercury reserves the right to amend or adjust the original quoted amount or re-invoice Customer if the original quoted amount was based upon incorrect information received at the time of the original quote; if additional services by the Carrier were required.

(d) Customer agrees that Mercury may charge and recover interest on any amount due under any invoice for Services that is not paid when due at the rate of 4.75% per month, or the highest rate allowed by law, added to all outstanding amounts and such other late charges as may be applicable. In the event it becomes necessary for Mercury to commence actions to recover past due invoices or late payments, Mercury shall be entitled to recover reasonable attorneys’ fees and costs incurred in the collection of such outstanding amounts.

(e) Customer may be subject to a credit approval. The amount of credit, if any, granted to Customer shall be in Mercury’s sole discretion. In the event Mercury, in its sole discretion, extends credit to Customer in connection with a particular transaction it shall not be considered a waiver of any provision in this Section 10.

11. General Lien and Right To Sell Customer’s Property.

Mercury shall have a general and continuing lien on any and all property of Customer coming into Mercury’s actual or constructive possession or control for monies owed to Mercury with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both. In the event of non-payment of any sum payable to Mercury, the shipment may be held by Mercury subject to storage charges and/or disposed of at public or private sale for satisfaction from the proceeds of such sale all sums due and payable, including storage charges and costs of sale. Mercury shall provide written notice to Customer of its intent to exercise such lien, the amount of monies due and owed, as well as any on-going storage or other charges. Customer shall notify all parties having an interest in its shipment(s) of Mercury’s rights and/or the exercise of such lien.



12. Hazardous Materials.

In the event Mercury accepts shipment of hazardous materials in accordance with Section 3(e) above, the following additional terms and conditions in this Section 12 shall apply. Customer and the Shipping Party shall comply with all rules and regulations set forth in:

- Title 49 of the U.S. Code of Federal Regulations (“CFR”), revisions thereto and/or reissues thereof;
- The “Dangerous Goods Regulations published by the International Air Transportation Association (“IATA”), revisions thereto and/or reissues thereof;
- The International Civil Aviation Organization (“ICAO”) Technical Instructions for the Safe Transport of Dangerous Goods by Air, published by the ICAO;
- The “International Maritime Dangerous Goods (“IMDG) Code,” and revisions thereto and/or reissues thereof.

For the avoidance of doubt, Mercury reserves the right to reject any Cargo of a hazardous, dangerous or damaging nature. If such Cargo are accepted and then, in its reasonable opinion, Mercury decides such goods constitute an unreasonable risk to other shipments, property, life or health, Mercury reserves the right at the expense of Customer to remove or otherwise deal with the Cargo, as needed, to remove or mitigate such risk.

13. No Duty To Maintain Records For Customer.

Customer acknowledges that pursuant to Sections 508 and 509 of the Tariff Act, as amended, (19 USC §1508 and 1509) it has the duty and is solely liable for maintaining all records required under the Customs and/or other Laws and Regulations of the United States. Unless otherwise agreed to in writing, Mercury shall only keep such records that it is required to maintain by applicable statute(s) and/or regulation(s), but does not act as a “record keeper” or “record keeping agent” for Customer.

14. Obtaining Binding Rulings, Filing Protests, etc.

Unless requested by Customer in writing and agreed to by Mercury in writing, Mercury shall be under no obligation to undertake any pre- or post-customs release action, including, but not limited to, obtaining binding rulings, advising of liquidations, filing of petition(s), and/or protests, etc.

15. Preparation and Issuance of Bills of Lading.

Where Mercury prepares and/or issues a bill of lading, Mercury shall be under no obligation to specify thereon the number of pieces, packages and/or cartons, etc., unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same. Mercury shall rely upon and use the Cargo weight supplied by Customer. Any terms and conditions printed on transportation documents such as bills of lading or delivery receipts will not change or supersede these Terms and Conditions of Service.

16. Transportation Security Administration.

Customer acknowledges that Mercury, to the extent it serves as an indirect air carrier, is required by the United States Transportation Security Administration (“TSA”) to maintain an air cargo security program. Customer hereby authorizes and consents to all Cargo tendered for transportation by air to be screened as required by TSA regulations. Customer shall disclose to Mercury if it is acting as agent, representative, broker, carrier, or other freight intermediary for any other person or entity, and shall assist Mercury to comply with TSA requirements by enabling Mercury to obtain all necessary documents from such other person or entity, or otherwise qualify, such person or entity



17. Consent to search.

Customer consents to a search of any shipment by Mercury and/or any Service Provider.

18. No Modification or Amendment Unless Written.

These Terms and Conditions of Service may only be modified, altered or amended in writing signed by both Customer and Mercury. Any attempt to unilaterally modify, alter or amend same shall be null and void.

19. Severability.

In the event any provision in these Terms and Conditions is determined by a court to be invalid and/or unenforceable, the remainder hereof shall remain in full force and effect.

20. Governing Law; Consent to Jurisdiction and Venue.

These terms and conditions of Service and the relationship of the parties shall be construed according to the laws of the Commonwealth of Massachusetts without giving consideration to any principles of conflict of law. The Parties irrevocably consents to the jurisdiction of the United States District Court and the Commonwealth of Massachusetts and agree that (a) any action relating to these Terms and Conditions and/or any Services performed or provided by, through, or under Mercury shall only be brought in such courts; (b) consent to the exercise of in personal jurisdiction by said courts; and (c) further agree that any action to enforce a judgment may be instituted in any jurisdiction.