



Updated: March 2021

## Website Terms of Use

PLEASE REVIEW THESE TERMS AND CONDITIONS OF USE BEFORE USING THIS WEBSITE (THE "WEBSITE"). THESE WEBSITE TERMS AND CONDITIONS (THE "TERMS OF USE") GOVERN YOUR ACCESS TO AND USE OF THE WEBSITES AND ASSOCIATED SOFTWARE FOUND AT [www.shipmercury.com](http://www.shipmercury.com) and [myshipnow.shipmercury.com](http://myshipnow.shipmercury.com) and [webtrak.shipmercury.com](http://webtrak.shipmercury.com) (HEREINAFTER INDIVIDUALLY OR PLURALLY, THE "WEBSITE"). THE WEBSITE IS AVAILABLE FOR YOUR USE ONLY ON THE CONDITION THAT YOU AGREE TO THE TERMS OF USE SET FORTH HEREIN. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF USE, DO NOT ACCESS OR USE THE WEBSITE. BY ACCESSING OR USING THE WEBSITE, YOU AND ANY ENTITY YOU ARE AUTHORIZED TO REPRESENT ("YOU" OR "YOUR") SIGNIFY YOUR AGREEMENT TO BE BOUND BY THESE TERMS OF USE.

### 1. SCOPE

These Terms of Use govern Your use of the Website and all applications, software (e.g. application program interfaces), and services available on the Website ("Services").

### 2. MODIFICATION

Mercury Business Services LLC (hereinafter "Mercury") may revise and update these Terms of Use at any time. Your continued usage of the Website after any changes to these Terms of Use will mean You accept those changes. Any aspect of the Website may be changed, supplemented, deleted or updated without notice at the sole discretion of Mercury. Mercury may also change or impose fees for products and services provided through the Website at any time in its sole discretion.

### 3. LICENSE AND OWNERSHIP

Any and all intellectual property rights ("Intellectual Property") associated with the Website and its contents (the "Content") are the sole property of Mercury, its affiliates and/or third parties. The Content is protected by copyright and other laws in both the United States and other countries. The components of the Website are also protected by trade dress, trade secret, unfair competition, and other laws and may not be copied or imitated in whole or in part. All custom graphics, icons, and other items that appear on the Website are trademarks, service marks or trade dress ("Marks") of Mercury, its affiliates and/or other entities that have granted Mercury the right and license to use such Marks and may not be used or interfered with in any manner without the express written consent of Mercury. Except as otherwise expressly authorized by these Terms of Use, You may not copy, reproduce, modify, lease, loan, sell, create derivative works from, upload, transmit, or distribute the Intellectual Property of the Website in any way without Mercury' or the appropriate third party's prior written permission. Except as expressly provided herein, Mercury does not grant to You any express or implied rights to Mercury' or any third party's Intellectual Property. Mercury grants You a limited, personal, nontransferable, non-assignable, revocable license to (a) access and use the Website, Content and Services only in the manner presented by Mercury, and (b) access and use the Mercury computer and network services offered within the Website (the "Mercury Systems") only in the manner expressly permitted by Mercury. Except for this limited license, Mercury does not convey any interest in or to the Mercury Systems, information or data available via the Mercury Systems (the "Information"), Content, Services, Website or any other Mercury property by permitting You to access the Website. Except to the extent required by law or as expressly provided herein, none of the Content and/or Information may be modified, reproduced, republished, translated into any language or computer language, re-transmitted in any form or by any means, resold, redistributed, reverse-engineered without the prior written consent of Mercury. You may not make, sell, offer for sale, modify, reproduce, display, publicly perform, import, distribute, retransmit or otherwise use the Content in any way, unless expressly permitted to do so by Mercury.



#### 4. PROHIBITED USES

In addition to other conditions set forth in these Terms of Use, You agree that:

- a. You shall not disguise the origin of information transmitted through the Website.
- b. You will not place false or misleading information on the Website.
- c. You will not use or access any service, information, application or software available via the Website in a manner not expressly permitted by Mercury.
- d. You shall not use the Website to compete with Mercury or to interfere with Mercury's business activities.
- e. Your obligations of confidentiality set forth in the Service Terms and Conditions found at <https://www.shipmercury.com/Docs/MercuryBusinessTerms.pdf> shall apply to any pricing or services information found on the Website.
- f. You will not input or upload to the Website any information which contains viruses, Trojan horses, worms, time bombs or other computer programming routines that are intended to damage, interfere with, intercept or expropriate any system, the Website or Information or that infringes the Intellectual Property (defined below) rights of another.
- g. Certain areas of the Website are restricted to customers of Mercury.
- h. You may not use or access the Website or the Mercury Systems or Services in any way that, in Mercury's judgment, adversely affects the performance or function of the Mercury Systems, Services or the Website or interferes with the ability of authorized parties to access the Mercury Systems, Services or the Website.
- i. You may not frame or utilize framing techniques to enclose any portion or aspect of the Content or the Information, without the express written consent of Mercury.
- j. You may not use for any type of illegal or criminal activity.

#### 5. ELIGIBILITY

The Website is provided by Mercury and available only to entities and persons over the legal age of 18 who can form legally binding contract(s) under applicable law. If You do not qualify, You are not permitted to use the Website.

#### 6. TERMINATION

You agree that Mercury, in its sole discretion, may terminate or suspend Your use of the Website, the Mercury Systems, Information, Services and Content at any time and for any or no reason in its sole discretion, even if access and use continues to be allowed to others. Upon such suspension or termination, You must immediately (a) discontinue use of the Website, and (b) destroy any copies You have made of any portion of the Content. Accessing the Website, the Mercury Systems, Information or Services after such termination, suspension or discontinuation shall constitute an act of trespass. Further, You agree that Mercury shall not be liable to You or any third party for any termination or suspension of Your access to the Website, the Mercury Systems, Information and/or the Services.

#### 7. ACCESS FROM THIRD PARTY SITES

Mercury may integrate with third party software, such as ERP systems, to allow You to import order data to more easily create shipping labels and to relay the order status back to Your system software. Mercury has no control over such third party software we may integrate with, or over the information You have entered into or have stored on such third party software. Mercury also has no control over the application programming



interface (API) for third party software or the currency of any links or data-sharing protocols. Because we do not have control over those sites or interfaces, we cannot be and are not responsible for any lost data, errors in data or in data transmission, downtime, unavailability, or any other loss or damage that might occur from using those software or the links on or connections to those software.

## **8. WE MAY CONTACT YOU**

You agree we may communicate with You by emails, text messaging, phone, mail, or otherwise; usually our communication will relate to the Website and Service updates, promotions, administrative, security and other issued relating to Mercury Services, including invitations to participate in promotional activities, newsletters and other communications. Receiving these communications is a condition of Your use of the Website, though we may offer You the opportunity to opt out of some of them. You may also block all communication from us by contacting our customer support team and asking to cancel Your Mercury account.

## **9. COLLECTION; USE OF YOUR DATA**

Mercury may automatically collect some information about Your computer when You visit the Website. For example, we may collect Your IP address, Web browser software (such as Chrome, Firefox, Safari, or Internet Explorer), and referring website. We also may collect information about Your online activity, such as Services booked. Our goals in collecting this automatic information included helping customize Your user experience and inhibiting fraud. Mercury may use sensitive billing information (such as cardholder name, credit card number, and expiration data) for the purpose of completing the Services You request on the Website. We use other information about You for the following general purposes: to provide You with the Services You request; to provide You with confirmation and updates related to the Services we provide; to manage Your account, including processing bills; to communicate with You in general; to respond to Your questions and comments; to measure interest in and improve our Services, the Website, and/or our applications; to notify You about special offers and products or services that may be of interest to You; to otherwise customize Your experience with this Website; to reward You as part of any reward and recognition program You choose to join; to solicit information from You, including through surveys; to resolve disputes, collect fees, or troubleshoot problems; to prevent potentially prohibited or illegal activities; to enforce these Terms of Use; and as otherwise described to You at the point of collection.

You are solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all data and information You submit to Mercury. Mercury may collect, use and distribute statistical information related to the usage of the Website, Services, or traffic patterns only in aggregate and de-identified form ("Aggregated Data"). Except as otherwise stated in our Privacy Policy, Aggregated Data does not contain any personal information about You, and Mercury will not sell personal information about You to third parties. Aggregated Data may be shared with third-parties but is stripped of all personal information and contains information like: the destination with the most shipping delays or the carrier most likely to deliver on time for a certain location. Mercury will own all such Aggregated Data.

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## **10. DISCLAIMER OF WARRANTIES**

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## **11. LIMITATION OF LIABILITY**

TO THE EXTENT PERMITTED BY APPLICABLE LAW AND TO THE EXTENT THAT MERCURY IS OTHERWISE FOUND RESPONSIBLE FOR ANY DAMAGES, MERCURY IS RESPONSIBLE FOR ACTUAL DAMAGES ONLY. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL MERCURY, ITS AFFILIATES, ITS LICENSORS, ITS SUPPLIERS OR ANY THIRD PARTIES MENTIONED AT THE WEBSITE BE LIABLE FOR ANY INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE AND CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION RESULTING FROM THE USE OF OR INABILITY TO USE THE WEBSITE, THE MERCURY SYSTEMS, INFORMATION, SERVICES OR THE CONTENT WHETHER BASED ON WARRANTY, CONTRACT, TORT, DELICT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT MERCURY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT PERMITTED BY LAW, THE REMEDIES STATED FOR YOU IN THESE TERMS OF USE ARE EXCLUSIVE AND ARE LIMITED TO THOSE EXPRESSLY PROVIDED FOR IN THESE TERMS OF USE.

## **12. INDEMNITY**

You will defend, indemnify and hold Mercury, its officers, directors, employees, and agents, harmless from and against any claim, cause of action, liability, expense, loss or demand, including without limitation reasonable legal and accounting fees, arising out of, or in any way connected with Your breach of these Terms of Use or Your use of, or access to, the Website or Services provided therethrough.

## **12. GOVERNING LAW AND JURISDICTION**

To the fullest extent permitted by law, these Terms of Use are governed by the laws of the Commonwealth of Massachusetts. To the fullest extent permitted by law, You hereby expressly agree that any proceeding arising out of or relating to Your use of the Website, the Mercury Systems, information, services and content shall be instituted in a state or federal court located in the city of Boston and the Commonwealth of Massachusetts and You expressly waive any objection that You may have now or hereafter to the laying of the venue or to the jurisdiction of any such proceeding. You agree that any claim or cause of action arising out of or related to Your use of the Website, the Mercury Systems, information, Services and/or Content must be filed within one (1) year after such claim or cause of action arose.

## **13. GENERAL**

You may not assign these Terms of Use or any of Your interests, rights or obligations under these Terms of Use. If any provision of these Terms of Use is found to be invalid by any court having competent jurisdiction, the



invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Use, which shall remain in full force and effect. No waiver of any of these Terms of Use shall be deemed a further or continuing waiver of such term or condition or any other term or condition.

#### **14. COMPLETE AGREEMENT**

By accepting these Terms of Use, You are also accepting the Privacy Policy which is included herein by reference.

Except as expressly provided in a separate license, service or other written agreement between You and Mercury, these Terms of Use and the Business Terms and Conditions and the Privacy Policy constitute the entire agreement between You and Mercury with respect to Your use of the Website, the Mercury Systems, and any software or Service, information and/or content contained therein, and supersede all discussions, communications, conversations and agreements concerning the subject matter hereof.