



TERMS & CONDITIONS

This document spells out the terms and conditions of MergeWorks (the “Company”). These terms and conditions supersede all previous policies, pricing, discounts, and lead times whether given orally or in writing by Company. All terms and conditions are subject to change at Company’s discretion. By issuing a PO (defined below) to Company, the Buyer agrees to abide by all terms and conditions stated below, as modified by Company from time to time in writing.

Specification Changes

Company maintains the right to affect, change, or discontinue product, and/or change pricing, materials, fabric or finishes, manufacturing processes, details and dimensions.

New Accounts/Terms of Sale

New dealer accounts require a completed Account Application along with credit references, a valid tax exempt or resale certificate where applicable and the approval of Company sales representative.

Buyer may request credit, and if approved, a credit limit will be established. If at any time the amount of open orders/invoices exceeds the established credit limit, Buyer will be required to submit payment to bring the account balance down below their credit limit. Larger orders and custom orders are subject to review with special arrangements for terms made at Company’s sole discretion. Orders for Buyers without credit terms will not be scheduled or released to production until payment in full is received by Company. All orders are payable in U.S. dollars and do not include taxes or installation.

Invoices unpaid after 30 days are subject to a late payment charge in the amount of 1.5% per month on the unpaid balance, until paid. Company reserves the right to suspend processing of additional orders until such time as delinquencies have been paid in full.

Order Placement/Order Verifications

Company requires all orders to be submitted in writing to avoid errors and/or duplication. Within 48 hours after receipt of a purchase order (PO), Company will send an Order Verification (OV) via email. All orders will be manufactured and invoiced based upon the information on the OV and shall be subject to Company’s Terms and Conditions. **It is Buyer’s responsibility to notify Company of any discrepancies immediately.** If Company does not receive a corrected OV within 48 hours, Company will assume that all information contained therein is correct and will build the product accordingly. **Buyer understands that the risk of errors for PO’s which have been verified, is Buyers.** In the event of a discrepancy between the PO and the OV, the terms of the OV will prevail. If you do not receive an OV, please call our Customer Service department to determine the reason; we may have questions that are delaying order entry.

Prices listed on the Company’s website or in any promotional materials are subject to change without notice. While Company strives to provide accurate pricing information, errors may occur, and Company reserves the right to correct any errors or inaccuracies at any time.

Ship Date & Order Delays

All OV’s contain an estimated shipping date which is the best estimate at the time the order is released to production. If you do not want the merchandise earlier than the specified date, please write “Do not ship for arrival prior to (Date)” on your PO. In that event, Company reserves the right to arrange or charge for storage at the Buyer’s risk and expense. Actual ship dates may differ from acknowledged dates. If an order is subject to a credit hold or prepayment, it will not be released to production and a ship date will not be assigned until after payment is received.

Company shall not incur any obligation or liability to the Buyer for failure to ship by the specified date unless Company has agreed to an unequivocal, firm shipping date in a separately signed written document, executed by authorized Company representative. Stating “must ship by (date)” on the PO will not alter this policy and Company will have no responsibility for complying with that date. Company holds no liability for any failure to deliver or any delay in delivering or performing any obligation due to any cause outside the reasonable control of Company, including but not limited to any act of Customer, failure of shipping company to deliver on time or otherwise perform, fire, flood, bad weather,



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war, terrorism, civil disturbance, riot, act of government, government regulation, governmental restriction on export or import, labor dispute, strike, plant shutdown, unavailability of materials, failure of supplier or subcontractor to deliver on time, equipment failure, or any act of God.

Revised Orders

Orders entered and verified cannot be changed or modified without Company's written consent and are subject to incurred costs and to Company's ability to secure materials and labor. Company reserves the right to increase the price if such a change warrants any extra charge. Orders are "made to order" and may not be cancelled for any reason once an OVR has been received by Buyer.

C.O.M. Fabric Requirements

Company is able to use Customer's Own Material on some products. For full COM terms see our COM TERMS, CONDITIONS AND LIMITED WARRANTY document available on our website.

Shipping

The title and responsibility for the product transfers from Company to Buyer upon placement of the product into the carrier's vehicle. Therefore, Company is not responsible for the product during shipping or delivery. Freight is prepaid and billed on all shipments unless special arrangements have been made otherwise and allows for normal ground transportation. Company reserves the right to determine the best way to ship any particular product. Freight terms apply to the Contiguous U.S. All LTL shipments are dock to dock. Additional services such as: after hour delivery, residential or inside delivery, lift-gate, delivery to limited access sites such as government buildings or schools, may be arranged for an extra charge and must be noted on the PO. **It is Buyer's responsibility to determine which, if any, additional services are needed at the time the order is placed.** Company will bill the Buyer any additional carrier costs that are not included on Buyer's PO at the full carrier charge, which may differ from Company's standard charges.

Company will make every effort to adhere to the estimated delivery date; however, **neither Company nor the carrier will guarantee or be held responsible in any manner for delays or deviation from the planned delivery date.** Company is not responsible for any costs incurred for late deliveries, including labor or other charges resulting from unforeseen delays.

Company is not responsible for a) delays in shipment, b) delays caused by unavoidable accidents, strikes, riots, c) damage to or destruction of plant or part of plant essential to the production of materials covered by an order, or d) any act of God. No claim for loss or damage shall be allowed in consequence thereof.

Lost or Damaged Freight

Company is not responsible for lost freight or damage that occurs in transit or in storage. The carrier signs for all goods received in good order from Company. It is the Buyer's responsibility to examine goods immediately upon receipt and file any claims with Company within 48 hours.

Company will assist Buyer in filing a freight claim for loss or damage if the following policy is followed:

- All shipments should be inspected at the time of delivery and any damages (dented boxes, opened packages, missing packages, holes, etc.) should be noted on the BOL or Delivery Receipt before the driver leaves.
- Digital photos of all sides of the packaging AND the damaged product should be taken of any suspected freight damage and forwarded to Company within 48 hours. Failure to do so negates our ability to file a claim with the carrier and therefore removes Company's and carrier's responsibility for any damages.
- All shortages must be reported to Company within 7 days of delivery. Company is under no obligation to expedite replacement or missing product, nor will Company compensate or reimburse for re-delivery, re-install or any other labor charges.
- In the event of lost freight, Company will initiate a dock search on Buyer's behalf. Company is not responsible for remakes or replacement of the product. In the event Buyer does not wish to wait for the product to be located and asks Company to remake the product, a PO for the replacement product will be required.

Failure to follow these policies will result in claim responsibility shifting from Company to Buyer.



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Returns

Merchandise may not be returned without Company's prior written consent. Authorized return merchandise is subject to a handling and restocking charge. All freight charges must be prepaid by Buyer on return shipments, or they will not be accepted. Damaged materials and build to order items cannot be returned under any condition.

Permits & Compliance

Company is not responsible for obtaining any permits, inspections or licenses required for installation or operation of the goods, or for the payment of any taxes. Company makes no promise or representation that the goods are suitable for a specific use or will conform to any federal, state, local, foreign or other laws, ordinances, regulations, codes or standards.

Product Warranties

Company warrants that your new product is free from defects in materials or workmanship, subject to the limitations, exclusions, and other provisions as detailed on Company's Warranty. This warranty does not apply to products made with COM materials. Our warranty is limited to the replacement or repair of the Company product itself. Full warranty information is available upon request and on our website.

Liability Waiver and Incidental Damages

Company disclaims any responsibility for damages or expenses incurred by Buyer for: expedited shipments, the repair of damage caused by others, any damages due to installation, or delay of any shipment. Any loss, expense, or damage incurred in replacing any lost, delayed or suspected defective product will be the responsibility of Buyer. Deductions from invoice payments are not permitted unless authorized in advance in writing by Company. **COMPANY'S LIABILITY WITH RESPECT TO THE PRODUCTS SOLD OR INSTALLATION HEREUNDER SHALL BE LIMITED TO THE WARRANTY PROVIDED BY COMPANY AND, WITH RESPECT TO ANY OTHER BREACHES BY COMPANY, SHALL BE LIMITED TO THE CONTRACT PRICE, OTHER THAN LIABILITY ARISING SOLELY FROM COMPANY'S WILLFUL MISCONDUCT. UNDER NO CIRCUMSTANCES WILL COMPANY BE RESPONSIBLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE COST OF DAMAGES, REPAIRS, LABOR OR OTHER COSTS INCURRED, UNLESS DUE TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF COMPANY.**