



## Statement of Agreed Pricing (S.O.A.P) Standard Terms and Conditions of Sale for Discounted from List Pricing

### ACCEPTANCE

These Terms and Conditions shall be deemed binding on Customer by its purchase of products from **Cush Corp** and shall supersede any previous SOAP agreement. These Terms and Conditions may only be modified if in writing and signed by an authorized officer of **Cush Corp**; each of these terms and conditions shall remain in effect unless the provision(s) are explicitly contradicted by the aforesaid writing. If Customer submits a form with contrary terms or conditions, such order shall be considered as confirmation only and shall in no way amend, prevail over, supplement or supersede any provision herein. These TERMS AND CONDITIONS may be superseded or revised only by **Cush Corp's** TERMS AND CONDITIONS.

### ACCEPTANCE OF GOODS

Customer shall inspect or test all goods upon receipt. Customer shall be deemed to have affected final acceptance of the good within fifteen (15) days from the date of initial shipment, unless written notice is received by **Cush Corp** within such period. In any case, the goods will be deemed accepted on the date when used or otherwise placed in commercial operation. Any warranty claim of miss-shipment must be notified to Cush Corp in writing in this period.

### CANCELLATION

Upon receipt of written notice from Customer, **Cush Corp** shall cancel any orders as instructed, subject to **Cush Corp's** (or its subcontractors) right to continue processing raw or finished material to the point at which processing can be halted with the least disruption and cost to **Cush Corp**. Customer shall be responsible for all costs associated with the cancellation and completion of processing of material. Special order products, Engineered-To-Order products, or standard products within 15 days of due date may not be able to be cancelled, contact Cush Corp.

### CERTIFICATES OF ORIGIN

When a Customer requests in writing or on a purchase order, Cush Corp agrees to deliver as a separate line item a NAFTA Certificate of Origin (Customs Form 434) for all goods that meet the NAFTA Rules of Origin and an appropriate Certificate of Origin for all other goods.

### CONFIDENTIALITY

In consideration of a mutual business relationship including mutual promises, rights and other good and valuable consideration, and with the understanding that this agreement is binding and that **Cush Corp** may enforce it at law or in equity, by injunction or otherwise, in any United States court of competent jurisdiction, Cush Corp may disclose to "CUSTOMER" confidential information and various trade secrets comprising formulas, patterns, drawings, electronic data, prints, proposals, devices, secret inventions, processes, customer information, pricing, compilations of other information, records, and specifications, which are owned by **Cush Corp** and are regularly used in the operation of business of **Cush Corp**.

If so disclosed by **Cush Corp** the "CUSTOMER" shall not disclose, in writing or social media, any of the aforesaid confidential information or trade secrets, directly or indirectly, or use them in any way, at any time except as specifically provided herein or with the expressed written consent of **Cush Corp**.

The "CUSTOMER" agrees:

- That it will limit the disclosure of such confidential information and trade secrets only to employees of "CUSTOMER" that have an immediate and specific need for the information. Customer will not forward any electronic data to a third party that contains **Cush Corp** electronic information without written consent of **Cush Corp**.
- That it will not permit reproduction of such information, outside of Customer, in any form without the expressed written consent of **Cush Corp**.
- That it will not use such information in any form in the manufacture of similar products for other customers, suppliers, or individuals or manufacture such parts or similar parts for its own use and competition with **Cush Corp**.



- That such confidential information and trade secrets shall remain the exclusive property of Cush Corp and that it will take all reasonable steps and precautions to ensure that, except as otherwise stated herein, no employee, outside entity or individual will obtain or use such information without the express written consent of Cush Corp.
- That it will not use such information in any form in the creation, execution, or compilation of any product design or analysis or similar product for other customers, suppliers, individuals, or it's own use and competition with Cush Corp.

### **CUSTOMER CREDIT LIMIT**

Credit limits are based on references and needs based for the customer. Customer credit is solely at the discretion of Cush Corp and can be revoked at any time per customer TERMS. Customers will receive a credit limit for open orders that have been invoiced and for work in process open orders to be produced. WIP credit limit may be a function of time that can affect how much can be purchased for a customer to hold pricing.

- **Open Credit Limit:** based on references and needs, per Cush Corp
- **WIP Credit Limit:** Usually the same as customer open credit limit, per Cush Corp.

### **CUSTOMER TERMS & STATUS**

- **STANDARD Customer Terms:** Cush Credit TERMS of Net 30 days with approved credit and signed SOAP agreement. Standard terms can only be changed by an officer of Cush Corp in writing and shall be kept in the customer file.
- **LATE Status:** Customer is past due of standard TERMS but has gotten a shipping waiver from prepay to ship because of notification to Cush Corp of payment release. Late status is a temporary status but Cush Corp will not prepay and add freight when customer is in LATE status. If payment is not received per customer notification the customer will go to CASH or Credit Hold status. All shipments on HOLD.
- **CASH Status Terms:** No Cush Corp credit, orders and balance to be paid in full before shipment. Cush Corp will not prepay and add freight charges for Cash Terms. Special Engineered-To-Order products will require prepayment at the discretion of Cush Corp. Customers delinquent 60 days past payment TERMS will be placed automatically on CASH status and be required to submit a new credit application for request of new payment TERMS after they have settled their account including late charges.
- **Credit HOLD Status:** All orders placed on hold if customer account is past due per customer agreed to TERMS. Hold status may apply to engineering, production, and purchasing with verbal or written notice to customer of Credit Hold Status. Written notification to Cush Corp of payment status may reinstate orders and move the customer to Cash Status or Standard Status per customer payment history at the discretion of Cush Corp.

### **CUSTOMER TYPE & DISCOUNT**

Cush Corp reserves the right to offer different discount rates for different classes of customers.

- Original Equipment Manufacturer.
- Dealer: A dealer that offers for sale other suspensions and/or suspension parts.
- Repair Shop: A qualified repair shop for Class 8 trucks or semi-trailers.
- Affiliate: A representative of Cush Corp promoting our products for a commission.

### **CUSTOMER Use of "Cush Corp" Name**

Customer will not use, authorize or permit the use of, a variation of the name "Cush Corp", "Cush Suspensions", "Cush Parts", "Cush Suspension Parts", "Cush", or any other Trade Mark(TM) common law or registered trademark or trade name owned by Cush Corp as part of its firm, corporate, website, social media, or business name in any way. Customer shall not contest the right of Cush Corp to exclusive use of any trademark or trade name used or claimed by Cush Corp. Dealer may, subject to Cush Corp's policies regarding reproduction of same, utilize Cush Corp's name, trademarks or logos in advertising of Cush Corp's products.



### **CUSTOMER Relationship**

The relationship between Cush Corp and Customer is that of vendor and vendee. Customer, its agents and employees shall, under no circumstances, be deemed or implied to be employees, agents or representatives of Cush Corp. Customer will not modify or reverse-engineer any of Cush Corp's Products without written permission from Cush Corp. Neither Customer nor Cush Corp shall have any right to enter into any contract or commitment in the name of, or on behalf of the other, or to bind the other in any respect whatsoever.

### **Dealer Requirements:**

- Dealer's Retail State Tax ID Number and information to be provided on Credit Application
- Dealer to be registered C Corp, S Corp, LLC, Partnership currently doing business in the truck or trailer suspension market.
- A List of current suspension company suppliers to be provided to Cush Corp.
- Dealer to provide shipping, billing, and contact information sheet.
- Dealer to provide active credit card to be on file for any online store processing or past due accounts.
- Dealer to provide trade references to be considered for open order credit.
- Dealer agrees to the content and to sign this agreement
- Dealer agrees to only have storefront for sale of product in agreed to area listed on Application, e-commerce is limited to the Continental 48 states.
- Dealer agrees to meet minimum requirements for pricing, if established at a future date, and will provide Cush Corp with a quarterly unbinding forecast if requested to do so.

### **Dealer Rights Granted**

Cush Corp hereby grants to Dealer a non-exclusive right, on the terms and conditions contained below, to purchase, inventory, promote and resell "Cush Corp Products" (as defined below). Nothing herein shall prevent or prohibit Cush Corp from selling any Company products directly to any customers or other Dealers.

### **Dealer Marketing Policies**

Dealer will, at all times, make good faith efforts to maintain adequate inventories of Cush Corp's products that they require with less than standard Cush Corp lead-time and will promote vigorously and effectively the sale of Cush Corp Products through all channels of distribution prevailing in Dealer's "primary marketing area" in conformity with Cush Corp's established marketing policies and programs. Dealer acknowledges its intent to market Cush Corp Products in its "primary marketing area," including Retail, Internet, Phone, & Mail Order Sales. Dealer and representatives agree not to disparage the good name of Cush Corp in any form: written, e-mail, website, and social media.

### **Dealer Web Site**

Dealer web sites are to respect the common law and registered trademarks of Cush Corp. Dealer web sites should not use any images from the copyrighted Cush Corp website. Some images may be used with written consent for each image by Cush Corp and possible compensation to Cush Corp.

### **Dealer Merchandising Policies**

Cush Corp will provide Dealer with merchandising assistance from time to time in the form of advertising programs, product and sales training and sales promotions. Dealer agrees to fully utilize such assistance in carrying out Cush Corp's merchandising and sales promotion policies.

### **Dealer Advertising Policies**

Cush Corp will cooperate with Dealer in providing for continuous and effective advertising and promotion of Cush Corp's Products throughout Dealer's principal marketing area, and Dealer agrees at Dealer's expense they may wish to participate in, actively promote and faithfully comply with the terms and conditions of such cooperative advertising and merchandising programs as Cush Corp may establish and offer to Dealer from time to time. Nothing herein shall prevent Dealer from independently advertising and marketing the Cush Corp Products, provided the form and content of the advertising or marketing materials are approved in writing by Cush Corp in advance.



### **Dealer Product Warranty Policies**

In the event that any of Cush Corp's Products are proved to Cush Corp satisfaction to have been defective at time of sale to Dealer, Cush Corp will make an appropriate adjustment in the original sales price of such product or, at Cush Corp election, replace the defective product. Cush Corp shall provide to Dealer information with respect to Cush Corp's limited warranty extended to the original consumer of Cush Corp Products:

CUSH CORP MAKES NO WARRANTY TO DEALER WITH RESPECT TO THE PRODUCTS, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OTHER THAN THE CUSH CORP WARRANTY FOR THAT PRODUCT.

### **Dealer Indemnification**

**A.** Cush Corp agrees to protect Dealer and hold Dealer harmless from any loss or claim arising out of inherent defects in any of Cush Corp's Products existing at the time such product is sold by Cush Corp to Dealer, provided that Dealer gives Cush Corp immediate notice of any such loss or claim and cooperates fully with Cush Corp in the handling thereof.

**B.** Dealer agrees to protect Cush Corp and hold Cush Corp harmless from any loss or claim arising out of the negligence of Dealer, Dealer's agents, employees or representatives in the installation, use, sale or servicing of Cush Corp Products or arising out of any representation or warranty made by Dealer, its agents, employees or representatives with respect to Cush Corp Products that exceeds Cush Corp's limited warranty. Further, in the event that any of Dealer's representatives shall, with respect to any of Cush Corp Products purchased from Dealer, fail to discharge the dealer's obligations to the original consumer pursuant to the terms and conditions of Cush Corp's product warranty and consumer service policies, Dealer agrees to discharge promptly such unfulfilled obligations.

### **Dealer Products Available**

As used in this Agreement, the term "Company Products" shall mean the products, related service parts, and accessories manufactured and/or sold by Cush Corp: Suspension Parts, Suspensions, Axles, Component Parts, apparel, hats, and related items.

- It is at the discretion of Cush Corp what products are offered to Dealer for sale.
- Dealer is not to offer, or imply to offer, any Cush Corp products or technology licensed to Cush Corp that has not been approved for sale to Dealer listed on a current Dealer Price Sheet or the Cush Corp online store.
- Products offered for sale to Dealer may be on a Dealer Price Sheet that documents Cush Corp part numbers, SRP, discount rates, minimum order requirements.
- A current Dealer Price Sheet may be provided at the request of a Dealer.

### **DEFAULT**

In the event of Customer's refusal to accept shipment or other default, **Cush Corp** at its discretion and option shall be entitled to retain all money paid by Customer, or on behalf of customer, on account as liquidated damages. If Customer fails to make any payments when due, or if there is a breach of any covenant or agreement by Customer, or if **Cush Corp** deems itself insecure, then, Customer shall be deemed in default and **Cush Corp** shall have, at its option, the right to take immediate possession of the goods, and/or declare all unpaid amounts immediately due and payable and/or suspend shipments to Customer. **Cush Corp** shall be entitled to set off any amount owed to Customer or any of Customer's related entities against any amount payable to **Cush Corp** in connection with any unpaid monies due to **Cush Corp**. **Cush Corp** shall have all the rights and remedies of a secured party under the Uniform Commercial Code in addition to all other rights as established herein, which rights and remedies shall be cumulative. Waiver by **Cush Corp** of any breach or default shall not constitute a waiver of any subsequent breach or default.

### **DELAY OR NONPERFORMANCE**

**Cush Corp** shall not be liable for incurred cost or shipping charges because of failure or delay in performance hereunder due in whole or in part to strikes, work stoppages, fires, acts of Nature, acts of terrorism, accidents, wars, rebellions, civil commotion, public strife, acts of any government, whether legal or otherwise, acts of public enemies, forces majeure, inability to secure or delay in securing transportation, inability to obtain or delays in obtaining goods, materials, or qualified labor, or any other causes beyond **Cush Corp's** reasonable control; this specifically includes delays or inability to obtain product because of the actions of **Cush Corp's** suppliers.



## **DISPUTE RESOLUTION/GOVERNING LAW**

Any and all disputes between **Cush Corp** and Customer shall be determined subject to Missouri law and its state or federal courts shall have exclusive jurisdiction. The parties hereto agree to the personal jurisdiction of the Missouri's courts, and that attorney's fees and costs shall be awarded to the prevailing party in any litigation. Customer must institute any action against **Cush Corp** within one year after Customer's claim arises, or such claim shall be barred notwithstanding any statutory limitations to the contrary.

## **EQUIPMENT**

(a) Any equipment including jigs, dies and tools (which **Cush Corp** acquires for use exclusively in the production of goods for Customer) will be and remain **Cush Corp** property and in **Cush Corp** possession and control, and any changes by **Cush Corp** are permissible.

(b) Any material or equipment owned or furnished by Customer to **Cush Corp** will be carefully handled and stored by **Cush Corp** while in **Cush Corp** possession. When for eighteen (18) consecutive months no orders acceptable to **Cush Corp** are received from Customer for goods to be made from any such equipment or materials, **Cush Corp** may, by written notice to Customer, request Customer to make disposition thereof at Customer's expense. If Customer fails to comply with such notice, **Cush Corp** may make such use or disposition of said materials or equipment as it desires, without liability or obligation to Customer.

## **FREIGHT CHARGES**

All products from **Cush Corp** are standard as FOB **Cush Corp**. If a customer request a partial shipment or shipment prior to being completely ready then, the additional charges will be to Customer and **Cush Corp** accepts no liability for production schedules, fines, or loss of revenue due to partial or late shipments.

- **Cush Corp** will not "prepay and add" freight for customers on CASH, HOLD, or LATE status.

## **GENERAL**

**Cush Corp** may assign its rights and obligations under these Terms and Conditions. If Customer changes its corporate status, both Customer and its successors continue to be bound by these Terms and Conditions of Sale, but **Cush Corp** reserves its rights under paragraph 11. No prior representation, affirmation or agreement shall be enforceable unless set forth herein.

## **INSURANCE**

- A. **Cush Corp** product liability insurance is per current industry standards. No purchase orders may be canceled based on requirements of product liability insurance beyond the current **Cush Corp** policy. It is the responsibility of the customer to determine **Cush Corp** insurance is in correlation with their requirements prior to submitting a purchase order to **Cush Corp**. Customer shall give **Cush Corp** 2 week notice for request of certificates of Insurance or note as such on a Purchase order as a condition of sale.
- B. **Cush Corp** premises liability insurance is in place to protect **Cush Corp** property and property of others, **Cush Corp** cannot be held liable for losses beyond current policy allowances.
- C. **Cush Corp** workers compensation insurance shall be the primary when on customer or vendor site.

## **NON-EXCLUSIVITY**

It is expressly understood and agreed that neither any Purchase Order nor any amendments or extensions thereof, constitute a "requirements contract" under the Uniform Commercial Code as adopted by the State of Missouri or any other law, nor do they constitute any obligation by either party hereto to deal exclusively with the other during the term of the Purchase Order.

## **NUCLEAR USE**

The products covered by these Terms and Conditions and sold by **Cush Corp** are not intended for application in connection with the use or handling of nuclear material or the construction or operation of a nuclear installation. Customer shall not use these products for such purposes, or permit others to use these products for such purposes unless an authorized officer of **Cush Corp** agrees to such use in writing. If any such use occurs without **Cush Corp's** written agreement, **Cush Corp** disclaims all liability for any nuclear or other damages, injury or contamination, and Customer shall protect, defend, and indemnify **Cush Corp**, **Cush Corp's** affiliates and directors, officers, employees, agents and representatives of **Cush Corp** and its affiliates from and against any and all claims, losses, damages, costs, actions judgments, expenses and liabilities of every kind and nature whatsoever (including, without limitation, attorneys' fees and costs and expenses of defense) which, either directly or indirectly, are in any way connected with, arise out of or result from such use.





## PACKAGING

**A.** Cush Corp will package products in with best intentions of stability and safety, it is the responsibility of the freight carrier to approve packaging before accepting the load. Any damages occurring after FOB Cush Corp will be the responsibility of the freight company or the unloading party. Customers should document and take pictures of freight damage before unloading and should document on the freight company BOL and notify the freight company as soon as possible to claim damages per their policy.

**B.** Customers may request special labels, order numbers, job numbers, customer part numbers, or color coding of product. Cush Corp accepts no liability for costs occurring from this service or lack thereof.

## PAYMENTS

Unless otherwise agreed by **Cush Corp.** in writing, all amounts payable hereunder shall be due to **Cush Corp** within Company TERMS of invoice date FOB Cush Corp, time being the essence. Late payments shall bear interest at the rate of 18% per annum or the highest rate permitted by law whichever is less. All prices shown are net, and in addition to the price of goods, Customer shall pay all expenses including taxes, insurance, freight, carriage and warehousing. Cush Corp reserves the right to submit open invoices that are at 90 days past FOB Cush Corp for collection, customer will be responsible for legal and collection fees and late payment fees that are accumulated in the collection process

## PAYMENT DISCOUNTS

Customers may be offered an early payment discount from the Cush Corp Sales Department. Conditions for accepting and applying discount are:

- a) Customer currently has no open invoices that are past customer TERMS.
- b) Payment must be postmarked as NET 10 days FOB Cush Corp Ship Date.
- c) Customer accepts that if these conditions are not meet and a discount is taken then, Cush Corp has the authority to bill the open discounted balance on the original TERMS of the order.

## PRICING

- a) Customer pricing is given based on customer type: OEM, Dealer, Repair Shop, or Aftermarket.
- b) Customers must provide information to prove customer type for approval from Cush Corp
- c) Prices or Discounts given herein do not include any Missouri sales or use taxes.
- d) Orders for Aftermarket must be processed thru the online store at listed prices.
- e) Prices subject to change without notice
- f) Prices on purchase orders more than 90 days old subject to change at any time.

## PURCHASE ORDERS

- a) Special order items or Engineer-To-Order items cannot be canceled and may require a down payment or prepayment.
- b) **Cush Corp** reserves the right to ship orders complete as soon as completed up to 7 days prior to customer documented ship date or immediately if no ship date is given on customer Purchase Order.
- c) Orders will be placed to **Cush Corp** by: fax, e-mail, or online store.
- d) Phone-in orders are not accepted, we will request a customer to get us a hard copy with PO number and due date.
- e) Orders to be drop shipped for a Customer should be noted specially, customer should call and confirm drop ship orders and receive order confirmation from **Cush Corp** to verify information.
- f) Orders that are Faxed or e-mailed should state: **Cush Corp** Part Number, Customer Part Number, Quantity, Expected Customer Price, Requested Ship Date, Payment Method, Ship Method, Ship to Address, and any special conditions.
- g) Orders that include **Cush Corp** integration of suspension to axle should include a customer created axle integration sheet showing specifications on how to integrate suspension to axle.

## PURCHASE ORDER AUTHORIZATION

Unless otherwise noted in documentation from the customer, **Cush Corp** will not assume liability for unauthorized purchase orders or purchase order release to ship from customer employees. It is the responsibility of the customer to inform their employees who is authorized to release purchase orders or shipments and shipping methods and who is authorized to communicate with **Cush Corp**. Any customer representative contacting **Cush Corp** will have purchase order and shipping authority unless otherwise documented to **Cush Corp**.



## **PURCHASE ORDER EXPEDITE REQUEST**

On occasions when a customer needs to expedite an order in beyond standard lead-times extra charges may apply to cover the extra expense to processing such an order thru our production, suppliers, freight charges, and management.

Conditions for expedited order:

- a) Time clock starts on day after receipt of PO to Cush Corp
- b) Clock stops when order is ready, on the dock, to ship from Cush Corp (ship date)
- c) Order cannot be canceled, order cannot be changed
- d) Order will be shipped collect by a freight company chosen by Cush Corp if none is specified on PO or in writing to Cush Corp
- e) Order will be shipped direct to address of customer issuing the PO if not specified on the PO or in writing to Cush Corp
- f) If ship date falls on a holiday or weekend then the ship date will be the next working day
- g) Expedite time clock is "X" business days not including federal holidays or weekends
- h) Cush reserves the right to ship early without penalty
- i) Cush reserves the right not to accept an expedited order and will notify customer ASAP
- j) Expedite fee will be shown as a line item on the customer PO
- k) Changes to product quantity may change the expedite fee rate
- l) Expedite fee may be a percentage rate, cost/unit, or tiered per units ordered
- m) If order is not ready on expedite ship date, Cush has 7 business days to fill the order without customer cancelation.
- n) Expedite fee will be waived if order is not ready to ship by requested ship date

## **PURCHASE ORDER SHIP DATES**

A critical aspect to **Cush Corp** and your company is to keep material flowing in the most efficient way with the least amount of inventory for both parties. This is why it is important to get expected ship dates DOCUMENTED on all purchase orders submitted to Cush Corp. With these ship dates we can both plan for our production schedule.

Ship date requirements per order:

- a) It is the responsibility of the customer to clarify, in writing, the intended ship date for each purchase order.
- b) Without ship dates documented on a purchase order, and only verbal communication, it is at the discretion of Cush Corp to set an expected ship date.
- c) Without a ship date documented on a purchase order, then Cush Corp can ship at any time and invoice the FOB date to start payment TERMS with the customer.
- d) Blanket orders are still required to have quantities and forecasted ship dates documented. Cush Corp requires 3 week documented notice prior to changes to blanket order ship dates.

## **PURCHASE ORDER SHIPMENT DELAY REQUEST BY CUSTOMER**

Ship dates are specified at the time of the PO, a customer may request to delay the ship date to reduce their inventory or attempt to delay the invoice date. Cush Corp asks that any delay request be applied for in writing prior to the ship date and that our Customers understand we may not be able to approve a delay request.

- Cush Corp processes product thru our MRP system and invoice dates are created the date the product is ready to ship per the terms of the PO. Product not shipped per customer request will be invoiced after 5 business days even if the product is still in storage at Cush Corp. Cush Corp reserves the right to ship product to customer freight collect if an approved ship date has not been agreed to after 3 weeks of the original ship date.
- Request to delay shipment of product for a completed purchase order will not change the original invoice date if the conditions of the PO have been met. Or, if the conditions of completion of the PO have been influence by the customer or customer supplied parts.
- Delay request of more than 6 weeks from the original ship date can be considered as a cancelation of order and return charges may apply. Product will be reallocated and customer will have to issue a new purchase order or a purchase order revision.



## **PURCHASE ORDER PROSSESING**

- A.** Cush Corp will employ its best efforts to fill orders promptly on acceptance, but reserves the right to allot available inventories at its discretion and will not be held liable for any sales lost due to delay or shortages.
- B.** Cush Corp will employ its best efforts to fill orders to match order specification, but reserves the right to use substitutions to fulfill an order. Cush Corp will perform due diligence to contact customer for approval of substitutions prior to shipping. Cush Corp may ask Customer to agree to a predetermined list of possible substitutions.
- C.** Customer orders may be required to meet minimum order requirements per part number pricing or order value. If the customer elects to place an order for less than the minimum order value then the customer Discount may be affected.
- D.** Orders are to be shipped complete. Backorders and partial shipments will only be done at customer request, approval, or notification. Additional shipping charges due to customer request for partial shipments will be charged to customer and not the responsibility of Cush Corp.

## **PURCHASE ORDER vs. CREDIT LIMIT**

Any customer order that exceeds their open order credit limit must be sent to Cush Corp for processing review. Cush Corp, at its sole discretion, may process any such requirement in one of the following ways:

- Orders from a customer of more than Open Credit Limit, down payment at time of order or deviation.
- Special payment TERMS may be required per Cush Corp notification
- Purchase may be authorized at the current level of pricing with standard terms and temporary increase of Open Credit Limit.
- Special order items may require down payment, to be reviewed by Cush Corp
- Customer may be placed on CASH TERMS to allow orders to be processed that exceed the Open Credit Limit.

## **REMEDY**

Cush Corp's sole responsibility and liability and Customer's exclusive remedy under this agreement shall be limited per Cush Corp Warranty Agreements. IN NO EVENT SHALL Cush Corp BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR ATTORNEYS FEES.

## **RETURNS**

Returned goods will be accepted only if Cush Corp has given prior written consent. Handling, inspection, restocking and invoicing charges also may be assessed against Customer. All returns allowed must be shipped at Customer's expense and must be in excellent resale condition. Special Products made to Customer's specifications are not returnable. Products integrated to axles per customer specifications will not be refundable.

- Approved Returns will only be offered as Cush Corp Store Credit and not Cash payment, get RMA number from Cush Corp prior to return.
- Approved Returns requesting Cash payment will have to be approved for Cash by Cush Corp officer, in writing, prior to return to Cush Corp with RMA number.

## **SHIPMENT**

(a) Scheduled shipment date is an estimate only. On or after the scheduled shipment date, Customer shall accept shipment upon notification by Cush Corp; or if Customer refuses shipment then Cush Corp is authorized to:

- i. Have the goods transported and warehoused, at Customer's expense and risk, which act shall constitute shipment to Customer, in which event Cush Corp may declare as immediately due all amounts due upon shipment, or, if any amounts are financed by Cush Corp, may declare the monthly installment payments to commence thirty (30) days from the date of such shipment to the warehouse.
- ii. At Cush Corp's option, defer shipment.

(b) Cush Corp may make partial shipments, with written notice to customer, and may invoice for each such partial shipment separately. Each partial Shipment will be deemed to be a separate sale, however, delay in delivery of any partial shipment will not relieve Customer of its obligation to accept delivery of remaining shipments.

(c) Cush Corp will not be charged penalty or freight for a late shipment, partial shipment. It is at the discretion of Cush Corp if freight charges for a backorder for a shipment will be charged to Cush Corp.

(d) Cush Corp's shipping weights will govern for each shipment or partial shipment. Should Customer dispute the shipping weight of any shipment or partial shipment, Customer will promptly notify Cush Corp in writing of the reasons for such dispute and provide to Cush Corp all necessary documentation to substantiate the difference.





(e) **Cush Corp** will use ship collect to customers using shipping companies specified by the company or specified by the company delivery date requirements. Cush Corp assumes no liability of freight charges for miscommunication by the customer to Cush Corp. It is the responsibility of the customer to clarify, in writing, the intended shipping method for each transaction. If customers use the service of Cush Corp to reduce freight charges then the customer assumes all liability of freight charges either shipped collect or prepay and add to a Cush Corp invoice.

(f) **Cush Corp** reserves the right to ship products, freight collect, to customer not scheduling freight if the customer has been notified at the time of the requested ship date and 10 days have pasts without appropriate shipping scheduled by customer.

#### **SHIPPING TOLERANCES**

The goods sold are subject to **Cush Corp** published shipping tolerances in effect on the date of order or any then applicable industry shipping tolerances for the goods if **Cush Corp** or the customer has no tolerances.

#### **TAXES AND PRICING**

All prices quoted are subject to change without notice and are exclusive of taxes. Customer shall pay all taxes resulting from transactions, including without limitation occupation, property, excise, sales or use tax, but excluding any taxes based on the income of **Cush Corp**. The purchase price including applicable taxes shall be subject to increase based on **Cush Corp's** established price at the date of actual shipment if shipment is delayed thirty (30) days or more beyond the scheduled shipment date and such delay is caused in whole or in part by circumstances beyond the reasonable control of **Cush Corp**.

#### **TITLE/RISK OF LOSS/INSURANCE**

Title to and risk of loss of the goods shall pass from **Cush Corp** to the Customer when the goods or component parts whether manufactured by **Cush Corp** or other supplier are placed in the possession of the carrier for shipment to Customer. Customer shall have insurance to cover goods in transit to be for no less than the total amount owing to **Cush Corp**, with loss first payable to **Cush Corp**.

**GENERAL WARRANTY**, May be subceeded by application specific warranty.

(a) **Cush Corp** warrants that title to the goods sold shall be free from any encumbrance, and will conform to the description contained on **Cush Corps'** invoice.

(b) **Cush Corp** DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OTHER THAN BY CUSH CORP DESIGN. THERE ARE NO REPRESENTATIONS OR WARRANTIES EXCEPT AS PROVIDED IN WRITING SIGNED BY AN AUTHORIZED OFFICER OF **Cush Corp**. (c) Customer is responsible for the designation and selection of product sold by **Cush Corp**. Customer shall hold **Cush Corp** harmless and indemnify and defend **Cush Corp** (including its affiliates, assigns, directors, officers, employees, agents and representatives) for any claims arising out of or relating to the inappropriate design, specification or use of product(s) sold by **Cush Corp** to Customer.

d) Cush Corp warrants that suspensions, shall be free of defects in material or workmanship. The warranty coverage applies when the suspension has been properly assembled and installed by a trailer original equipment manufacturer (OEM), properly maintained (as described in all applicable Cush publications), and used in its recommended application and within the rated capacities for its intended use & vocation. All non-recommended suspension applications must receive written approval from CUSH in order to be covered under this warranty. Coverage may differ on some items used in applications for which special written approval from CUSH has been granted. For more warranty coverage information, contact the CUSH Warranty Department. The CUSH suspension warranty coverage begins when the vehicle is put into service and ends when the time or mileage period specified in this warranty is reached.

The warranty shall not apply to or include any repair or replacement as a result of the following conditions:

- Accident, fire or other casualty
- Misuse or negligence including, but not limited to, overloading
- Lack of reasonable and proper maintenance
- Repairs improperly performed or replacements improperly installed
- Uses of component parts, replacement or otherwise, that are not manufactured or distributed by Cush
- Modifications not recommended or approved by Cush (in writing)
- Use other than those intended by Cush and the trailer OEM
- Normal wear and deterioration occasioned by the use of the suspension system
- Products not paid for per CUSH Corp SOAP terms, or non-payment

The liability of CUSH under this warranty is limited solely to the repair or replacement of defective material or workmanship by an authorized party. CUSH shall not be liable for repairs performed by any unauthorized parties. This



warranty does not include any expense of or related to transportation of the parts to or from the place where the repair is to be performed or compensation for inconvenience or loss of use while the suspension system is being repaired. CUSH shall not be liable for any expense, loss or damage (direct, incidental, consequential or exemplary — including, but not limited to, towing expenses, downtime expenses, cleaning expenses, cargo damage, incidental charges or any other losses arising in connection with the sale, use or inability to use the suspension system) resulting from the warranty-covered part found to be defective. CUSH gives no expressed warranty with respect to its suspension systems and products except as specifically set forth herein. Any warranty implied by law, including any warranty of merchantability or fitness for a particular purpose, is limited to the expressed warranty term provided in this warranty.

## **CUSTOMER CREDIT APPLICATION SHEET 1 INSTRUCTIONS**

### **AGREEMENT**

*The Customer certifies that the information contained herein is true and correct, and further agrees that this Credit Application is submitted to Cush Corp, as well as its successors and assigns. Customer grants permission to Cush Corp., to obtain independent credit reports and other information from Customer's trade references and banks, and authorizes credit references and banks to release information that may be used to determine creditworthiness, both now and in the future. Customer agrees that if credit is extended, all credit and sales made shall be subject to the following:*

- 1. Customer shall pay the full amount of the invoice(s) when due, which is defined to be thirty (30) days, standard TERMS, from the invoice date, unless an alternate timeframe has been agreed to by both Cush Corp and Customer, in writing.*
- 2. If payment in full is not received by the due date, Customer shall owe, in addition to the invoice amount, a late fee of 1.5% per month, or the maximum allowed by law, on all unpaid balances. In the event Cush Corp refers any unpaid past due balance to an outside collection agency and/or attorney for collection, Customer agrees to pay Cush Corp. reasonable attorneys' fees and all other costs of collection.*
- 3. Customer acknowledges receipt of and agrees hereafter to the Cush Corp **S.O.A.P.**, and as may also be set forth on invoices submitted by Cush Corp.*
- 4. I further certify on Customer's behalf that Customer is solvent as defined by Article 1 of the Uniform Commercial Code, and that Customer will immediately, in writing, notify Cush Corp if it becomes insolvent.*
- 5. This Agreement shall be continuing unless mutually terminated by both parties in writing.*
- 6. I further certify that I am an officer of Customer, knowledgeable of the financial conditions of Customer, and that I am empowered and authorized to enter into the aforesaid Agreement on Customer's behalf.*
- 7. Customer is to fill out the credit application sheet 1 fully and send into Cush Corp for approval, delay of credit terms can cause a delay of any initial order.*



# Customer S.O.A.P. Acceptance, Discount Qualifier, & Credit Application

## CUSTOMER TYPE

OEM Trailer Manufacturer \_\_\_\_\_ Suspension Dealer \_\_\_\_\_ Trailer Dealer \_\_\_\_\_ Repair Shop \_\_\_\_\_ Aftermarket \_\_\_\_\_

- Have you bought direct from Cush or another suspension manufacturer in the last 12 months? N \_\_ Y \_\_ (who): \_\_\_\_\_
- Have you purchased a Cush product from a Dealer in the last 12 months? N \_\_ Y \_\_ (who): \_\_\_\_\_
- How much are you planning to purchase per month (\$) ? \_\_\_\_\_ Annually (\$) ? \_\_\_\_\_
- What suspension companies do you currently use? \_\_\_\_\_

## INFORMATION

Legal Name ("Customer"): \_\_\_\_\_ Website: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Contact E-mail: \_\_\_\_\_

Bill to address: \_\_\_\_\_ Ship to address: \_\_\_\_\_  
(P.O. Box or Street address)

(City, State, Zip Code & County)

## SHIPPING COLLECT ACCOUNTS

(For Boxes under 100Lbs.) UPS Ground: \_\_\_\_\_ FedEx Ground: \_\_\_\_\_

Preferred LTL or Broker Shipper Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

## BUSINESS INFORMATION \*\*\*Required for Customers other than Aftermarket Type\*\*\*

DBA, Doing business as (if different): \_\_\_\_\_ SIC or NAICS Code/Business Type: \_\_\_\_\_

Taxable: Yes \_\_\_\_\_ No \_\_\_\_\_ Accounts Payable Fax Number: \_\_\_\_\_

(If no, please attach sales tax exemption certificate)

Date business started: \_\_\_\_\_ Number of Employees: \_\_\_\_\_ Annual Sales/Revenue: \$ \_\_\_\_\_

## Type of Business:

\_\_\_\_ Corporation: Division of \_\_\_\_\_ List owners, partners, officers and ownership percentage  
 State of Incorporation \_\_\_\_\_ Public \_\_\_\_\_ Private \_\_\_\_\_  
 \_\_\_\_ Partnership Name \_\_\_\_\_ Title \_\_\_\_\_ % \_\_\_\_\_  
 \_\_\_\_ Limited Liability Company  
 \_\_\_\_ Sole Proprietor Name \_\_\_\_\_ Title \_\_\_\_\_ % \_\_\_\_\_

## ACCOUNTING TYPE

CASH (pay to ship) \_\_\_\_\_ Credit Card \_\_\_\_\_ Credit \_\_\_\_\_ Requested\$ \_\_\_\_\_ (For Credit Continue to Trade Ref >>).

Trade Reference Name: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Trade Reference Name: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Trade Reference Name: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Bank Name: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Contact Name: \_\_\_\_\_ Account Number: \_\_\_\_\_

I certify that all statements are correct to my knowledge, I authorize Cush Corp to investigate the information I have provided herein, our company will meet the terms of the SOAP.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

(For Cush interoffice) Cush Customer#: \_\_\_\_\_ Account Type: \_\_\_\_\_ Credit Amount\$: \_\_\_\_\_ Discount: \_\_\_\_\_