

## Use Agreement

Updated on March, 2014

Welcome to our site (the "Site"). The Site is intended to provide you with information about our wines, campaigns and sponsored events. It also allows you to interact with us and others and provides you the opportunity to contact us directly. While we want you to enjoy the experience of visiting our Site, we also want you to understand the terms to which you agree when visiting the Site. References to "we" or "us" or "our Brand" herein refer to E. & J. Gallo Winery and its brands, affiliates, subsidiaries, service providers and designees as deemed appropriate by us.

### Compliance with Terms

By accessing the Site, you are agreeing to these Terms of Use, our [Privacy Policy](#), as well as other legal notices, terms and policies posted on the Site from time to time (together referred to as "Terms"), all of which are expressly incorporated herein by this reference.

You agree to use the Site only in accordance with the Terms, whether you are a "Visitor" (which means that you simply browse the Site) or you are a "Member" (which means you have registered with us for the Site, if registration is available on the Site). The term "User" means a "Visitor" or a "Member". Please read and save all of the Terms. If you do not agree with the Terms, do not use the Site or any of its features. If you register to become a Member you will be required to indicate your acceptance to these Terms of Use during the registration process.

### Amendment

We may amend or terminate any Terms at any time. If we amend or terminate any Terms, we will notify you of such amendment or termination by posting the revised Terms on the Site and such revised Terms will be effective at the time we post them on the Site. Each time you use the Site, you should visit and review the then current Terms that apply to your transactions and use of the Site. Your continued use of the Site after we have posted revised Terms signifies your acceptance of such revised Terms. If you are dissatisfied with the Site, its content or any Terms (including as modified), you agree that your sole and exclusive remedy is to discontinue using the Site. The Terms are the entire agreement between you and our Brand with respect to your use of the Site.

### Eligibility

You are not permitted to view the Site unless you are 21 years of age or older. If you are younger than 21, please do not visit the Site. Your profile may be deleted and your Membership may be terminated without warning, if we believe that you are under 21 years of age.

Use of the Site and its features and registration to be a Member ("Membership") is void where prohibited. By using the Site and its features, you represent and warrant that (a) all registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information; and (c) your use of the Site and its features does not violate any applicable law or regulation.

### Term

The Terms, as we may revise them from time to time, shall remain in full force and effect while you use the Site features or are a Member. You may terminate your Membership at any time, for any reason, by following the instructions on the Member's Account Settings page. We may terminate your Membership at any time, for any or no reason, with or without prior notice or explanation, and without liability. Even after Membership is terminated, the Terms will remain in effect and you will remain bound by them except that your right to use the Site as a Member will terminate. Any terms or conditions in these Terms of Use that must survive to give effect to their meaning, shall survive the termination, expiration, or cancellation of these Terms of Use.

## **Passwords**

If registration is available on the Site, then when you register to become a Member, you will be asked to choose a user name and password. You are solely responsible for maintaining the confidentiality of this information. You are not permitted to allow anyone else to use your user name and password to log into the Site. You must notify us immediately if you suspect any unauthorized use of your account or access to your password. You are solely responsible for any and all use of your account so please be vigilant in protecting its confidentiality.

## **Your Use of the Site**

Users have a non-transferable, non-exclusive license to access the Site, to view information contained at the Site, and to interact with the Site solely for their own personal use and not for any commercial purpose. You agree not to use the Site for any unlawful purpose. You agree not to rent, retransmit, disclose, publish, sell, assign, lease, sublicense, market, or transfer the Site or any portion thereof or use it in any manner not expressly authorized by the Terms. You agree not to copy, reverse engineer, translate, port, modify or make derivative works of any portion of the Site.

Tampering with the Site, misrepresenting the identity or age of a User, using buying agents or conducting fraudulent activities on the Site are prohibited.

## **User Content**

### *Generally*

We may, but are not obligated to, allow you to upload content for display on the Site. If we allow this feature, please choose carefully the information you post on the Site, provide to other Users and/or otherwise make available to us and through the Site. Your content may not include any form of Prohibited Content, as outlined below. Despite this prohibition, information, materials, products or services provided by other Members (for instance, in their profile or displayed on the Site in areas in which Users can post content) may, in whole or in part, be unauthorized, impermissible or otherwise violate the Terms, and we assume no responsibility or liability for this material. If you become aware of misuse of the Site or its features by any person, please click on the "Contact Us" link on the Site pages and follow the directions as to how to contact us and notify us of the misuse.

We reserve the right, in our sole discretion, to reject, refuse to post or remove any posting (including private messages) by you, or to deny, restrict, suspend, or terminate your access to all or any part of the Site at any time, for any or no reason, with or without prior notice or explanation, and without liability. We expressly reserve the right to remove your profile and/or deny, restrict, suspend, or terminate your access to all or any part of the Site if we determine, in our sole discretion, that you have violated the Terms, pose a threat to us, our suppliers and/or our Users or for any other purpose we determine in our sole discretion.

### *Proprietary Rights and Grant of License to E. & J. Gallo Winery*

We do not claim any ownership rights in the text, files, images, photos, video, sounds, musical works, works of authorship, applications, or any other materials (collectively, "Content") that you post on the Site (if applicable). After posting your Content to the Site, you continue to retain any such rights that you may have in your Content, subject to the limited license herein.

By displaying, publishing Content on the Site, or otherwise submitting Content to us (collectively, "posting"), you hereby grant to E. & J. Gallo Winery an irrevocable, perpetual, worldwide, royalty-free, non-exclusive license to use, modify, delete from, add to, create derivative works of, publicly perform, publicly display, reproduce and distribute (and to sublicense the foregoing rights through multiple tiers of licensees) such Content on or through the Site and/or in connection with advertising and promoting the Site (including, for example, through screen shots) and/or our products and any other E. & J. Gallo Winery products or brands in any media formats and through any media channels now existing or developed in the future. For purposes of clarity, the license granted to us herein permits us to use your

Content for (among other things) commercial exploitation and in connection with any of the brands or products of E. & J. Gallo Winery and in any of our social media platforms. From time to time, we may remove Content from the Site, permanently or temporarily, provided that even if we do remove such Content from the Site, we shall have no obligation to cease our other uses of the Content as permitted above.

You represent and warrant that: (i) you own the Content posted by you on or through the Site or otherwise have the right to grant the licenses set forth above, and (ii) the posting of your Content on or through the Site does not violate the privacy rights, publicity rights, contract rights, intellectual property or any other rights of any person or entity. In furtherance of the foregoing, you agree that you will not post Content that violates or is not in compliance with our Acceptable Use Policy. You agree to be fully responsible for and to pay any and all royalties, fees, and any other monies owing any person or entity by reason of any Content posted by you.

The Site may contain Content provided by our Brand, including, without limitation, text, images and logos ("Brand Content"). Brand Content is protected by copyright, trademark, patent, trade secret and other laws, and we own and retain all rights in the Brand Content and the features and functionality of the Site. We hereby grant you a limited, revocable, nonsublicensable license to reproduce and display the Brand Content (excluding any software code) solely for your personal use in connection with viewing the Site.

The Site may contain Content of Users and other licensors. Except as provided within the Terms, you may not copy, modify, translate, publish, broadcast, transmit, distribute, perform, display, use for any commercial purpose, or sell any Content appearing on or through the Site.

#### *Content Posted.*

We may reject, refuse to post or delete any Content for any or no reason, including, without limitation, Content that in the sole judgment of our Brand violates these Terms, our [Privacy Policy](#) and/or our [Acceptable Use Policy](#).

We assume no responsibility for monitoring the Site for inappropriate Content or conduct. If at any time we choose, in our sole discretion, to monitor the Site, we nonetheless assume no responsibility for the Content, no obligation to modify or remove any inappropriate Content, and no responsibility for the conduct of the User submitting any such Content.

You are solely responsible for your use of the Site, the Content that you post on or through the Site, and any material or information that you transmit to other Members and for your interactions with other Users.

#### **Protection of Intellectual Property Rights**

We respect the intellectual property of others, and require that our Users do the same. You may not upload, embed, post, email, transmit or otherwise make available any material that infringes any copyright, patent, trademark, trade secret or other proprietary rights of any person or entity. We reserve the right to terminate the Membership of anyone we suspect to be an infringer.

If you believe that your intellectual property has been copied and/or provided to us in a way that constitutes copyright infringement, you may request removal of the content pursuant to the procedures provided in our [Copyright Infringement Notice Procedure](#).

#### **Disclaimers**

We are not responsible for and make no warranties, express or implied, as to any content on the Site, including, without limitation with respect to the accuracy and reliability of the Brand Content, User Content or other Content posted on or through the Site, whether caused by us, by Users, by any of the

equipment or programming associated with or utilized by the Site, or otherwise. The User Content does not necessarily reflect the opinions or policies of our Brand . Profiles and third party applications created and posted by Members on the Site may contain links to other websites. We are not responsible for the content, accuracy or opinions expressed on such websites, and such websites are not necessarily investigated, monitored or checked for accuracy or completeness by us. Inclusion of any linked website on the Site does not imply approval or endorsement of the linked website by our Brand. When you access these third party sites, you do so at your own risk. We take no responsibility for third party advertisements or third party applications that are posted on or through the Site, nor do we take any responsibility for the goods or services provided by our advertisers. We are not responsible for the conduct, whether online or offline, of any User of the Site including, without limitation, any Content posted by any User. We assume no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, any User or Member communication. We are not responsible for any problems or technical malfunction of any telephone network or lines, computer online systems, servers or providers, computer equipment, software, failure of any email or players due to technical problems or traffic congestion on the Internet or on any portion of the Site or combination thereof, including any injury or damage to Users or to any person's computer related to or resulting from participation or downloading materials in connection with the Site. Under no circumstances shall we be responsible for any loss or damage, including personal injury or death, resulting from use of the Site, attendance at a Brand event, from any User Content posted on or through the Site, or from the conduct of any Users, whether online or offline. Additionally, we shall have no liability for any viruses or anything beyond our control. We are not responsible for any damage to your computer, software, modem, telephone or other property resulting from your use of the Site. We will not be liable to you if you are unable to access information through the Site.

Some states do not allow the exclusion or limitation of certain warranties and/or liabilities, so certain of the above limitations or exclusions may not apply to you.

**Our Site is provided "AS-IS" and as available and we expressly disclaim any warranty of fitness for a particular purpose or non-infringement. We cannot guarantee and do not promise any specific results from use of the Site.**

#### **Limitations of Our Liability**

IN NO EVENT SHALL WE BE LIABLE FOR ANY DAMAGE, CLAIM OR LOSS INCURRED BY YOU, INCLUDING WITHOUT LIMITATION COMPENSATORY, INCIDENTAL, DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, IRRESPECTIVE OF WHETHER WE HAVE BEEN INFORMED OF, KNEW OF, OR SHOULD HAVE KNOWN OF THE LIKELIHOOD OF SUCH DAMAGES. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, DEFAMATION, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS, AS WELL AS THIRD-PARTY CLAIMS. IF THE WARRANTY EXCLUSIONS OR LIMITATIONS OF LIABILITY SET FORTH IN THIS USE AGREEMENT ARE FOR ANY REASON HELD UNENFORCEABLE OR INAPPLICABLE, YOU AGREE THAT OUR AGGREGATE LIABILITY SHALL NOT EXCEED ONE HUNDRED U.S. DOLLARS (\$100).

#### **Our Service Providers**

We may use one or more third party service providers to design and/or operate parts of the Site. In such cases, each such service provider is also included in the terms "we" and "us" for purposes of the Terms.

#### **Indemnification**

You agree to indemnify and hold E. & J. Gallo Winery, its subsidiaries, and affiliates, and their respective officers, agents, partners and employees, harmless from any loss, liability, cost, expense, claim, or demand, including without limitation, reasonable attorneys' fees, due or relating to or arising out of your use of the Site in violation of the Terms and/or arising from a breach of the Terms and/or

any breach of your representations and warranties set forth in the Terms and/or arising out of or relating to any Content that you post.

We are based in the State of California, in the United States of America. We make no claims that the Site, any Brand Content, User Content or other Content are appropriate or may be transmitted, used or installed outside of the United States. Access may not be legal by certain persons or in certain countries. If you access the Site from outside the United States, you do so at your own risk and are responsible for compliance with the laws of your jurisdiction.

### **Miscellaneous**

The Terms will be construed, and their performance enforced, under the laws of California without reference to choice of law principles. Any dispute relating to the Terms or the Site may be litigated only in a court having jurisdiction and venue in Sacramento County for state court causes of action and in the Eastern District of California for federal court causes of action. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Terms. We may assign the Terms, in whole or in part, to a related entity or to a third party or to any third parties in connection with the sale, assignment, or other transfer of the Site or sale, assignment, merger, reorganization, or other transfer of any of our brands or companies.

### **Arbitration**

#### *Generally*

BY USING OUR SITE, YOU AGREE TO ARBITRATE ALL DISPUTES AND CLAIMS BETWEEN US. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to: (i) claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory; (ii) claims that arose before these or any prior Terms were adopted; (iii) claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and (iv) claims that may arise after the termination of these Terms of Use.

You agree, by entering into these Terms of Use, that you and our Brand each are waiving the right to a trial by jury or to participate in a class action. These Terms of Use evidence a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive the termination of these Terms of Use.

#### *Opt Out*

Notwithstanding the above, YOU MAY CHOOSE TO PURSUE YOUR CLAIM IN COURT AND NOT BY ARBITRATION IF YOU OPT OUT OF THESE ARBITRATION PROCEDURES WITHIN 30 DAYS FROM THE DATE WHEN YOU FIRST ACCEPT THESE TERMS (the "Opt Out Deadline"). You may opt out of these arbitration procedures by calling [888-922-7735](tel:888-922-7735) or emailing [consumerrelations@gallo.com](mailto:consumerrelations@gallo.com). to request the opt out form. Any opt out received after the Opt Out Deadline will not be valid and you must pursue any claim in arbitration.

#### *Notice of Disputes*

For all disputes and claims, whether pursued in court or arbitration, you must first give us an opportunity to resolve your dispute or claim by sending a written Notice of Dispute (the "Notice") to us at the following address: Office for Dispute Resolution, E. & J. Gallo Winery , 1541 Cummins Drive, Modesto, CA 95358. The Notice must (a) describe the nature and basis of the dispute or claim and (b) set forth the specific relief sought (a "Demand"). If our Brand and you do not reach an agreement to resolve the dispute or claim within 30 days after Notice is received, you or our Brand may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by us or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or we are entitled.

The arbitration will be governed by the Commercial Arbitration Rules and Supplementary Procedures for Consumer Related Disputes (collectively, the "AAA Rules") of the American Arbitration Association ("AAA"), as modified by these Terms of Use and will be administered by the AAA. The AAA rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. The arbitrator is bound by the terms of these Terms of Use. The arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of the Terms, including but not limited to, any claim that all or any part of the Terms are void or voidable.

The payment of all AAA filing, administration and arbitrator fees for any arbitration initiated hereunder will be governed by the AAA Rules; provided, however that for claims under \$75,000 as to which you provided notice and negotiated in good faith as required above before initiating arbitration, if the arbitrator finds that you are the prevailing party in the arbitration, you will be entitled to a recovery of reasonable attorneys' fees and costs. Except for claims under \$75,000 determined to be frivolous, we agree not to seek an award of attorneys' fees in such arbitration proceedings even if an award is otherwise available under applicable law.

Unless we agree otherwise, any arbitration hearings will take place in the county of your billing address.

#### **Class Action Waiver**

YOU AND OUR BRAND AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both of us agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. If you choose to pursue your claim in court by opting out of the arbitration provision as specified above, this Class Action Waiver provision will not apply to you. Neither you, nor any other User, can be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding without having complied with the opt out requirements above.

EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (INCLUDING BUT NOT LIMITED TO ANY CLAIMS, COUNTERCLAIMS, CROSS-CLAIMS, OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. FURTHER, EACH PARTY HERETO CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF EITHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. EACH OF THE PARTIES ACKNOWLEDGES THAT THIS SECTION IS A MATERIAL INDUCEMENT FOR THE OTHER PARTY ENTERING INTO THE TERMS.

The Terms are accepted upon your use of the Site or any of its features and is further affirmed upon you becoming a Member (if applicable). The Terms constitute the entire agreement between you and our Brand regarding the use of Site and its services and features. Our failure to exercise or enforce any right or provision of the Terms shall not operate as a waiver of such right or provision. The section titles in the Terms are for convenience only and have no legal or contractual effect. The Terms operate to the fullest extent permissible by law. If any provision of the Terms is unlawful, void or unenforceable, that provision is deemed severable from the Terms and does not affect the validity and enforceability of any remaining provisions.