

Fulkerson Winery's Wine Club Terms and Conditions

These terms and conditions (these "Terms") apply to your membership in the Fulkerson Winery Wine Club (the "Club") whether you join through the website available at www.fulkersonwinery.com (the "Website") or in person at a Fulkerson Wine Cellars, LLC (referred to as "Fulkerson Winery", "us", "we", or "our" as the context may require) location. **These Terms are subject to change by us without prior written notice at any time, in our sole and absolute discretion pursuant to Section 14.**

THESE TERMS CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS AND EXCLUSIONS THAT MIGHT APPLY TO YOU. PLEASE THEREFORE READ THESE TERMS CAREFULLY.

BY CLICKING THE "SUBMIT" BUTTON ON THE ONLINE MEMBERSHIP APPLICATION, OR BY SIGNING A HARD COPY OF THE MEMBERSHIP APPLICATION, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE LEGALLY BOUND BY THESE TERMS.

YOU MAY NOT ORDER FROM US AS A MEMBER OR JOIN THE CLUB IF YOU (A) DO NOT AGREE TO THESE TERMS, (B) ARE NOT THE OLDER OF (i) AT LEAST 21 YEARS OF AGE AND (ii) THE LEGAL AGE TO FORM A BINDING CONTRACT WITH FULKERSON WINE CELLARS, LLC, ITS SUCCESSORS AND/OR ASSIGNS, OR (C) ARE PROHIBITED FROM ACCESSING OR USING THE CLUB OR THE WEBSITE OR ANY OF THE WEBSITE'S CONTENTS, GOODS OR SERVICES BY APPLICABLE LAW.

PLEASE NOTE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, MEMBERSHIP IN THE CLUB IS SUBJECT TO AUTOMATIC RENEWAL PURSUANT TO SECTION 4 OF THIS DOCUMENT.

The Fulkerson Winery staff is available to explain the benefits of Wine Club membership and may be reached by phone during regular business hours at (607) 243-7883.

1. Membership Benefits; Accounts. Subject to applicable limitations and exceptions, Club members receive wines selected quarterly by Fulkerson Winery as well as additional Club benefits described on the Wine Club Benefits page viewable under the Wine Club tab on the Website, as the same may be updated from time to time. Only individuals meeting membership eligibility requirements may become Club members. Each Club membership shall correspond to one individual, and Club memberships may not be shared or transferred between or among individuals except through a gift membership. Club membership benefits may not be the same for all members, and some special promotional offers, benefits and communications may be based on factors not satisfied by all Club members, including, but not limited to, member geographic location. You must present your Wine Club membership card (or other identifying credentials) with every transaction in order to assure accurate tracking of your membership benefits. In order to be eligible for membership benefits, your account must be in good standing, including being fully paid up to the current date. Fulkerson Winery may terminate your club membership and disqualify you from future Club participation if you engage in improper use of Club membership (for example, by failing to follow the Terms or allowing others to use your membership). *Fulkerson Winery is not responsible for failure to provide you with any benefit to which you are entitled unless and until you have notified Fulkerson Winery about such failure of benefits within 60 days of such failure of benefits occurring.* To report any problems regarding membership benefits, such as

your failure to receive Club benefits to which you are entitled, please notify Fulkerson Winery by contacting us at (607) 243-7883 as soon as possible.

2. Membership Fees.

Terms of payment are within our sole and absolute discretion and payment must be received by us before our acceptance of a membership or any other order. We accept [Visa, Mastercard, Discover, American Express, CASH, Check, and Fulkerson Winery Gift Cards] for all purchases. You represent and warrant that (i) the credit card information you supply to us is true, correct and complete, (ii) you are duly authorized to use such credit card for the purchase, (iii) charges incurred by you will be honored by your credit card company, and (iv) you will pay charges incurred by you at the posted prices, including all applicable taxes, if any. **All fees for Club membership, shipping charges and other related charges, are automatically billed to the credit card on record with your membership.** For gift memberships, the fees for the entire period of the gift membership are charged at the time of purchase. All fees charged are non-refundable except as expressly set forth in these Terms. Notwithstanding when fees are billed to a member, all Club benefits are activated promptly upon registration in the Club. Fees are billed on the first day of the month of the “Anniversary Quarter” (as described below) for annual Club memberships, and the first day of the month of each quarter for quarterly members. For quarterly members, you agree to pay the fee for at least one shipment.

It is your responsibility to inform Fulkerson Winery of any changes to your membership record and information. Changes to your membership account and information, other than cancellations, may be submitted online through the Edit Memberships page available under the Account tab on the Website, in person at our store, or by calling Fulkerson Winery at (607) 243-7883. All changes must be received by us at least fourteen (14) days prior to any charge or shipment in order to be effective to avoid that charge or shipment. Fees will be due for any cancellations or changes not submitted to us prior to our processing time for a particular charge or shipment, as specified above.

3. Availability. You acknowledge and agree that wines provided through the Club may be limited in quantity and may at times not be available at the time of your pick-up or delivery, especially in the event that you do not pick up your wine in the period for which such wine was offered. Fulkerson Winery, in its sole discretion, may substitute another item for any item that Fulkerson Winery determines in its sole and absolute discretion is no longer available for shipment to you or pick-up by you, without any adjustment in price or refund. Certain Club members may be eligible to select available alternative wine varieties that are different from the selected wines based on Club membership status as set forth in more detail on the Wine Club FAQ section available under the Wine Club tab on the Website, as the same may be updated from time to time.

4. Membership Term and Renewals.

There are two types of memberships: annual memberships and quarterly memberships. Each of these types of memberships can also be purchased as a gift membership. Any member with a membership purchased within 60 days of the close of a quarter, will be shipped the previous quarter’s shipment with the member’s welcome packet and this previous quarter shall be the member’s “Anniversary Quarter” for any annual membership. (Anniversary Quarter months are February, May, August and November.) **This may result in an annual membership term for the first year of as little as 10 months or as many as 13 months depending on time of signup.**

*Except as prohibited under applicable law, each membership (whether annual or quarterly) other than a gift membership, which shall automatically renew unless you cancel such automatic renewal at least **FOURTEEN (14) DAYS** before the first day of your “Anniversary Quarter” if the membership is an annual membership or at the end of each quarter if the membership is a quarterly one. All cancellations may only be*

submitted in person at our store or by calling Fulkerson Winery at (607) 243-7883. If renewal is cancelled for any reason, membership benefits shall terminate one (1) year from date of the last payment for annual members, or three (3) months from the date of the last payment for quarterly members.

5. Damage or Delay. If you have selected the shipment option for your Club membership, the wine will be sent quarterly. There is no available return or exchange for wines shipped as part of the membership, except as discussed herein. If your wine is being shipped, conditions outside of the control of Fulkerson Winery may adversely affect the wine during shipment. If your wine, at the time of delivery, is received damaged, spoiled or in an otherwise defective state, you may contact us and Fulkerson Winery may, at its sole and absolute discretion, send a replacement or exchange. ***This is your only and exclusive remedy for damaged or defective product.*** Fulkerson Winery will not refund any shipping charges, and additional shipping and other charges will apply to deliveries to you that are returned as undeliverable or refused. In the event of circumstances outside the control of Fulkerson Winery which prevent, hinder or delay Fulkerson Winery from performing its obligations, including, but not limited to, acts of God, strikes, acts of terror, fire, destruction of facilities, accidents, war (whether declared or undeclared), riot, governmental action or inaction, including delays or failure to issue permits and/or any authorizations or an inability to obtain supply and materials or means of shipping, Fulkerson Winery's obligations to Club members will be suspended for the duration of such event. Fulkerson Winery may, in its sole discretion, cancel Club membership for affected members, up to and including cancellation of all memberships and disbanding of the Wine Club.

6. Shipping; Taxes. Shipping costs may vary by state and location and the amount charged by Fulkerson Winery may change from time to time. In addition, we may, from time to time, determine that we are not able to complete delivery or ship wine to you. If we are unable to ship your wine to you, we will offer you the option to change your membership to an in-store pick up membership and you can pick up your wines at our Winery location. Taxes and other related charges may change or may vary between states and locations. Sales tax, which is not included in the membership price, may also vary by location. Fulkerson Winery, in its sole and absolute discretion, shall collect sales tax to the extent it determines doing so is required by any applicable local, state or federal taxing authorities.

7. Limitations; Changes in Applicable Law.

Member benefits are non-transferable. Member discounts and benefits are not valid in combination with any other special offers or discounts offered by Fulkerson Winery. All goods, services and benefits provided by Fulkerson Winery are only provided and/or shipped to such states in which Fulkerson Winery determines it is authorized to provide such goods, services and benefits in its sole and absolute discretion. Fulkerson Winery reserves the right to refuse shipment to any state where Fulkerson Winery determines, in its sole and absolute discretion, it is not appropriately licensed and Fulkerson Winery is under no obligation to you to attempt to become appropriately licensed in order to ship your order in such case.

Membership in the Club is void where prohibited, and by joining the Club, you represent that your membership in the Club and receipt and use of any goods or services received through the Club does not and will not violate any applicable law, rule or regulation. You agree to comply with all applicable laws, rules and regulations, including, without limitation, laws governing the possession, sale, export and use of alcoholic beverages. We will only sell, provide or deliver wines to persons who are at least 21 years of age. In purchasing or activating a Club membership, you represent to Fulkerson Winery that you are at least 21 years of age and that any person to whom delivery of any alcohol will be made is also at least 21 years of age. When wine is delivered or picked up, the person receiving the wine will be required to show Club membership documents or other credentials proving Club membership and acceptable photo identification proving that he or she is at least 21 years of age. Fulkerson Winery has the right to terminate or suspend the Club, or your membership in the Club, at any time and for any reason whatsoever, including, without limitation, following a

change in law. You agree to follow all applicable state and federal laws regarding any product that you receive as a result of your membership in the Club. **YOU ARE NOT ENTITLED TO ANY REFUNDS FOR ANY SUCH CANCELLATION. FULKERSON WINERY, IN ITS SOLE AND ABSOLUTE DISCRETION, MAY, HOWEVER, REFUND YOU A PORTION OF MEMBERSHIP FEES PAID FOR WINE THAT WE ARE NOT ABLE TO SHIP TO YOU BASED ON A CHANGE IN ANY APPLICABLE LAWS, RULES OR REGULATIONS.**

Wine provided or delivered by Fulkerson Winery under these Terms to Club members is not for resale or export and is for personal consumption only.

8. Personal Information. If you are concerned about how the information you provide to Fulkerson Winery is used, or have any questions regarding the retention or use of said information, please visit the “Terms and Conditions” page on our Website or contact Fulkerson Winery directly at (607) 243-7883 for more information.

9. Invalidity of Terms. If any provision of these Terms is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

10. No Waiver. Fulkerson Winery's failure to exercise or delay in exercising any right, power or privilege under these Terms shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.

11. Governing Law. These Terms shall be governed, construed, and enforced in accordance with the laws of the State of New York, without regard to its conflict of laws rules that would cause another jurisdiction’s laws to apply.

12. Venue. Any litigation in any way relating to these Terms shall be brought and venued exclusively in state and federal courts residing in Monroe County, New York, and you hereby consent to the jurisdiction of these courts and waive any objection that such venue is inconvenient or improper.

13. Entire Agreement. These Terms constitute the entire agreement between you and Fulkerson Winery in respect to your membership in the Club and the goods, services and benefits provided by Fulkerson Winery related to your membership in the Club.

14. Change in Terms. Fulkerson Winery and only Fulkerson Winery may, in its sole discretion, modify the Terms or add or delete any of the Club membership rules, conditions, benefits or rewards, in whole or in part. Fulkerson Winery may make any such changes at any time, with or without notice. To review the most recent version of these Terms, please regularly visit the link for “Terms & Conditions” available on the Wine Club Information page under the Wine Club tab on the Website. Your continued use of the Club after a posted change in these Terms will constitute your acceptance of and agreement to such changes. Any change or revision shall not apply to disputes of which Fulkerson Winery had notice on or before the date of the change or revision.

15. Limitation of Liability; Disclaimer.

BY JOINING THE CLUB, YOU UNDERSTAND AND AGREE THAT YOUR MEMBERSHIP IN THE CLUB, THE GOODS AND SERVICES PROVIDED BY FULKERSON WINERY, AND ALL OTHER BENEFITS RELATED TO THE CLUB ARE PROVIDED ON AN “AS IS” BASIS AND WITHOUT

WARRANTY OF ANY KIND EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

OUR LIABILITY TO YOU RESULTING FROM OR RELATED TO YOUR MEMBERSHIP IN THE CLUB OR ANY GOODS, SERVICES OR BENEFITS YOU HAVE RECEIVED OR FAILED TO RECEIVE THROUGH CLUB MEMBERSHIP OR OTHERWISE WILL UNDER NO CIRCUMSTANCES EXCEED THE ACTUAL AMOUNT PAID BY YOU TO US, NOR WILL WE UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY LOSS OF PRODUCTION, WORK, DATA, USE, BUSINESS, GOODWILL, REPUTATION, REVENUE OR PROFIT, ANY DIMINUTION IN VALUE, COSTS OF REPLACEMENT GOODS OR SERVICES, OR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES OR LOSSES, WHETHER DIRECT OR INDIRECT.

NOTE: SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

BY JOINING THE CLUB, YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS FULKERSON WINERY AND ITS AFFILIATES, AND RESPECTIVE OWNERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND SUCCESSORS AND ASSIGNS FROM ANY AND ALL LOSSES, CLAIMS, DAMAGES, COSTS AND EXPENSE RELATED TO YOUR MISREPRESENTATION OF ANY INFORMATION PROVIDED BY YOU TO FULKERSON WINERY, YOUR BREACH OF ANY OF THESE TERMS OR MISUSE OF ANY OF THE GOODS, SERVICES OR THE BENEFITS OF MEMBERSHIP IN THE CLUB.

IN ANY DISPUTE, NEITHER YOU NOR FULKERSON WINERY WILL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CLUB MEMBERS OR CUSTOMERS IN COURT OR IN ARBITRATION OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.