

**Terms of Service**  
**Last Updated: 12/6/2017**

Welcome to the **St. Julian Wine Co. Inc.**, mobile device application (the “**App**”). Please read these Terms of Service (the “**Terms**”) carefully because they govern your use of the App and our wine club membership and ordering services for wines and other products offered by us, accessible via the App. To make these Terms easier to read our services and the App are collectively called the “**Services**.”

**Agreement to Terms**

By using the Services, you agree to be bound by these Terms. If you don't agree to these Terms, do not use the Services.

**Third Party Beneficiary**

The App is made and operated by ProofLoyalty, LLC. (“**Proof**”), a third-party service provider and business partner of [Winery]. Proof is a third-party beneficiary of these Terms and both [Winery] and Proof will have the right to enforce these Terms against you, separately or jointly, including without limitation, the indemnity clause herein.

**Changes to Terms or Services**

We may modify the Terms at any time, in our sole discretion. If we do so, we'll let you know either by posting the modified Terms on the App or through other communications. It's important that you review the Terms whenever we modify them because if you continue to use the Services after we have posted modified Terms on the App or through other communications, you are indicating to us that you agree to be bound by the modified Terms. If you don't agree to be bound by the modified Terms, then you may not use the Services anymore. Because our Services are evolving over time we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion.

**ARBITRATION NOTICE: UNLESS YOU OPT OUT OF ARBITRATION WITHIN 30 DAYS OF THE DATE YOU FIRST AGREE TO THESE TERMS BY FOLLOWING THE OPT-OUT PROCEDURE SPECIFIED IN THE “ARBITRATION” SECTION BELOW, AND EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE “ARBITRATION” SECTION BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND [WINERY] WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU ARE WAIVING YOUR RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING.**

**Who May Use the Services**

Eligibility

You may use the Services only if you are 21 years or older and are not barred from using the Services under applicable law.

Registration and Your Information

If you want to use certain features of the Services you'll have to create an account (“**Account**”). You can do this via the App [or through your account with certain third-party social networking services such as Facebook (each, an “**SNS Account**”). If you choose the SNS Account option we'll create your Account by extracting from your SNS Account certain personal information such as your name and email address and other personal information that your privacy settings on the SNS Account permit us to access.

It's important that you provide us with accurate, complete and up-to-date information for your Account and you agree to update such information, as needed, to keep it accurate, complete and up-to-date. If you don't, we might have to suspend or terminate your Account. You agree that you won't disclose your Account password to anyone and you'll notify us immediately of any unauthorized use of your Account. You're responsible for all activities that occur under your Account, whether or not you know about them.

**Using the Services; Payment Terms**

Through the Services, you will be able to browse, and place orders for, the [Winery] products listed on the App (each such product, a “**Product**”). In order to place orders through the Services, you will be required to provide your personal details. In particular, you must provide your real name, phone number, e-mail address, and other requested information as indicated. When you place an order for a Product, Proof will collect your credit card

details and pass them to its third-party payment service provider, who will charge your credit card account in connection with your order, and you agree to make all applicable payments in connection with any order you place. When you place an order through the Services, you represent that: (i) any credit card information you supply is true and complete; and (ii) you'll pay the applicable price listed, as well as any shipping and handling charges and applicable taxes. Products purchased by you are for personal or gift use and not for commercial use. We reserve the right to restrict multiple quantities of a Product being shipped to any one customer or postal address. We may discontinue or stop offering any Product or line of Products at any time and for any reason through the App.

### **Terms and Conditions of Sale; Other Policies Applicable to Product(s)**

Please see our website at [www.stjulian.com](http://www.stjulian.com) for our Product Terms and Conditions of Sale, including Product pricing, shipping terms, warranties and disclaimers with respect to Products, returns and refund policy, and policies with respect to damaged or defective Products.

### **Privacy Policy**

Please refer to our Privacy Policy [www.stjulian.com/PrivacyPolicy](http://www.stjulian.com/PrivacyPolicy) for information on how we collect, use and disclose information from our users.

### **Feedback**

We welcome feedback, comments and suggestions for improvements to the Services ("**Feedback**"). You can submit Feedback by emailing us at [info@proofloyalty.com](mailto:info@proofloyalty.com). You grant to us a non-exclusive, worldwide, perpetual, irrevocable, fully-paid, royalty-free, sublicensable and transferable license under any and all intellectual property rights that you own or control to use, copy, modify, create derivative works based upon and otherwise exploit the Feedback for any purpose. [

### **Content and Content Rights**

For purposes of these Terms: (i) "**Content**" means text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available through the Services; and (ii) User Content means any Content that Account holders (including you) provide to be made available through the Services. Content includes without limitation User Content.

### **Content Ownership, Responsibility and Removal**

[Winery] does not claim any ownership rights in any User Content and nothing in these Terms will be deemed to restrict any rights that you may have to use and exploit your User Content. Subject to the foregoing, [Winery], Proof and their respective licensors exclusively own all right, title and interest in and to the Services and Content, including all associated intellectual property rights. You acknowledge that the Services and Content are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services or Content.

### **Rights in User Content Granted by You**

By making any User Content available through Services you hereby grant to [Winery] and Proof a non-exclusive, transferable, sublicenseable, worldwide, royalty-free license to use, copy, modify, create derivative works based upon, distribute, publicly display, publicly perform and distribute your User Content in connection with operating and providing the Services and Content.

You are solely responsible for all your User Content. You represent and warrant that you own all your User Content or you have all rights that are necessary to grant us the license rights in your User Content under these Terms. You also represent and warrant that neither your User Content, nor your use and provision of your User Content to be made available through the Services, nor any use of your User Content on or through the Services will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

You can remove your User Content by specifically deleting it. However, in certain instances, some of your User Content (such as posts or comments you make) may not be completely removed and copies of your User Content may continue to exist on the Services. We are not responsible or liable for the removal or deletion of (or the failure to remove or delete) any of your User Content.

### Rights in Content Granted to You

Subject to your compliance with these Terms, [Winery] and/or Proof, as applicable, grants you a limited, non-exclusive, non-transferable, non-sublicenseable license to access and view the Content solely in connection with your permitted use of the Services and solely for your personal and non-commercial purposes.

### Social Sharing

If you choose, you may share links to Content on certain of your SNS Accounts, via SMS Messaging, and via email, through the social sharing functionality we've implemented through the Services.

### **Rights and Terms for Apps**

Subject to your compliance with these Terms, you may download and install a copy of the App on a mobile device or computer that you own or control and to run such copy of the App solely for your own personal non-commercial purposes. You may not copy the App, except for making a reasonable number of copies for backup or archival purposes. Except as expressly permitted in these Terms, you may not: (i) copy, modify or create derivative works based on the App; (ii) distribute, transfer, sublicense, lease, lend or rent the App to any third party; (iii) reverse engineer, decompile or disassemble the App; or (iv) make the functionality of the App available to multiple users through any means. All rights in and to the App not expressly granted to you under these Terms are reserved for Proof.

### **Alerts and Notifications**

As part of the Services, you may (if enabled) receive push notifications, text messages, alerts, emails, or other types of messages directly sent to you ("**Push Messages**"). You have control over the Push Messages settings, and can opt in or out of these Push Messages through the Services (with the possible exception of infrequent, important service announcements and administrative messages). Please be aware that third party messaging fees may occur depending on the message plan you have with your wireless carrier.

### **General Prohibitions**

You agree not to do any of the following:

- Use, display, mirror or frame the Services or any individual element within the Services, [Winery's]name, any [Winery] trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page or in another mobile application, without [Winery's] or Proof's express written consent, as applicable;
- Access, tamper with, or use non-public areas of the Services, Proof's computer systems, or the technical delivery systems of Proof's providers;
- Attempt to probe, scan or test the vulnerability of any Proof system or network or breach any security or authentication measures;
- Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Proof or any of Proof's providers or any other third party (including another user) to protect the Services or Content;
- Attempt to access or search the Services or Content or download Content from the Services through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Proof;
- Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;
- Use any meta tags or other hidden text or metadata utilizing a Proof trademark, logo URL or product name without Proof's express written consent;
- Use the Services or Content, or any portion thereof, for any commercial purpose or for the benefit of any third party or in any manner not permitted by these Terms;
- Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Services or Content to send altered, deceptive or false source-identifying information;
- Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Services or Content;

- Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services;
- Collect or store any personally identifiable information from the Services from other users of the Services without their express permission;
- Impersonate or misrepresent your affiliation with any person or entity;
- Violate any applicable law or regulation; or
- Encourage or enable any other individual to do any of the foregoing.

Although we're not obligated to monitor access to or use of the Services or Content or to review or edit any Content, we have the right to do so for the purpose of operating the Services, to ensure compliance with these Terms, and to comply with applicable law or other legal requirements. We reserve the right, but are not obligated, to remove or disable access to any Content, at any time and without notice, including, but not limited to, if we, at our sole discretion, consider any Content to be objectionable or in violation of these Terms. We have the right to investigate violations of these Terms or conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

### **DMCA/Copyright Policy**

[Winery] respects copyright law and expects its users to do the same. It is [Winery's] policy to terminate in appropriate circumstances Account holders who repeatedly infringe the rights of copyright holders. Please see [<Insert url to ProofLoyalty's Copyright policy>](#), for further information.

### **Links to Third Party Websites or Resources**

The Services and App may contain links to third-party websites or resources. We provide these links only as a convenience and are not responsible for the content, products or services on or available from those websites or resources or links displayed on such websites. You acknowledge sole responsibility for and assume all risk arising from, your use of any third-party websites or resources.

### **Termination**

We may terminate your access to and use of the Services, at our sole discretion, at any time and without notice to you. You may cancel your Account at any time by sending an email to us at [orders@stjulian.com](mailto:orders@stjulian.com). Upon any termination, discontinuation or cancellation of Services or your Account, the following provisions of these Terms will survive: "Content and Content Rights," the first paragraph of "Content Ownership, Responsibility and Removal," "Rights and Terms for Apps," "Warranty Disclaimers," "Indemnity," "Limitation of Liability," "Dispute Resolution," and "General Terms."

### **Warranty Disclaimers**

THE SERVICES, PRODUCTS AND CONTENT ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Services or Products will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness or reliability of any Content.

### **Indemnity**

You will indemnify and hold harmless Proof and [Winery] and their respective officers, directors, employee and agents, from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with (i) your access to or use of the Services, Products or Content or (ii) your violation of these Terms.

### **Limitation of Liability**

NEITHER [WINERY] NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES, PRODUCTS OR CONTENT WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES, PRODUCTS OR CONTENT, WHETHER BASED ON

WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT [WINERY] HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

IN NO EVENT WILL THE TOTAL LIABILITY OF [WINERY], OR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES, PRODUCTS OR CONTENT, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES, PRODUCTS OR CONTENT EXCEED THE GREATER OF (I) THE AMOUNTS YOU HAVE PAID FOR USE OF THE SERVICES OR PRODUCTS PURCHASED VIA THE SERVICESOR (II) ONE HUNDRED DOLLARS (\$100).

THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN [WINERY] AND YOU.

### **Governing Law**

These Terms and any action related thereto will be governed by the laws of the State of California without regard to its conflict of laws provisions.

### **Dispute Resolution**

#### **Agreement to Arbitrate**

You and [Winery] agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services, Products or Content (collectively, "**Disputes**") will be settled by binding arbitration, except that each party retains the right: (i) to bring an individual action in small claims court and (ii) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights (the action described in the foregoing clause (ii), an "**IP Protection Action**"). The exclusive jurisdiction and venue of any IP Protection Action will be the state and federal courts located in the Northern District of California and each of the parties hereto waives any objection to jurisdiction and venue in such courts. **You acknowledge and agree that you and [Winery] are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding.** Further, unless both you and [Winery] otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Dispute Resolution" section will be deemed void. Except as provided in the preceding sentence, this "Dispute Resolution" section will survive any termination of these Terms.

#### **Arbitration Rules**

The arbitration will be administered by the American Arbitration Association ("**AAA**") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "**AAA Rules**") then in effect, except as modified by this "Dispute Resolution" section. (The AAA Rules are available at [www.adr.org/arb\\_med](http://www.adr.org/arb_med) or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

#### **Arbitration Process**

A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a form Demand for Arbitration at [http://www.adr.org/aaa/ShowPDF?doc=ADRSTG\\_004175](http://www.adr.org/aaa/ShowPDF?doc=ADRSTG_004175) and a separate form for California residents at [http://www.adr.org/aaa/ShowPDF?doc=ADRSTG\\_015822](http://www.adr.org/aaa/ShowPDF?doc=ADRSTG_015822).) The arbitrator will be either a retired judge or an attorney licensed to practice law and will be selected by the parties from the AAA's roster of arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

#### **Arbitration Location and Procedure**

Unless you and [Winery] otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of the documents that you and [Winery] submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

#### Arbitrator's Decision

The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award of damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law. [Winery] will not seek, and hereby waives all rights it may have under applicable law to recover, attorneys' fees and expenses if it prevails in arbitration.

#### Fees

Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, [Winery] will pay all such fees unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

#### Changes

Notwithstanding the provisions of the "Changes to Terms or Services" section above, if [Winery] changes this "Dispute Resolution" section after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (including by email to [orders@stjulian.com](mailto:orders@stjulian.com)) within 30 days of the date such change became effective, as indicated in the "Last Updated" date above or in the date of [Winery's] email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and [Winery] in accordance with the provisions of this "Dispute Resolution" section as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

#### **General Terms**

These Terms constitute the entire and exclusive understanding and agreement between [Winery] and you regarding the Services, including any purchases you make of Products, and these Terms supersede and replace any and all prior oral or written understandings or agreements between [Winery] and you regarding the Services. If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

You may not assign or transfer these Terms, by operation of law or otherwise, without [Winery's] prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. [Winery] may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

Any notices or other communications provided by [Winery] under these Terms, including those regarding modifications to these Terms, will be given: (i) via email; or (ii) by posting to the Services. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

[Winery's] failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of [Winery]. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

**Contact Information**

If you have any questions about these Terms or the Services, please contact [Winery] at 716 S. Kalamazoo St. Paw Paw, MI 49079.