

## **E. & J. GALLO WINERY PORTAL TERMS OF USE & PRIVACY POLICY**

**Last Updated: March 2, 2020**

Welcome to E. & J. Gallo Winery's Grapevine portal website. These Terms of Use & Privacy Policy set forth the terms and conditions applicable to your use of the Grapevine portal website and any related websites or applications made available by Gallo from time to time (collectively, the "Portal") through which you may access certain Gallo Services (as defined below). The Portal is intended to provide our Portal Customers (as defined below) with a digital repository through which they may obtain information about and access certain products, materials, services and software of Gallo in connection with their business relationship with Gallo ("Gallo Services"), including information and marketing materials on Gallo products, advertising and promotional plans; sales support tools for Gallo employees, including reporting information, links to Gallo intracompany websites and other resources; tools for our Trade Partners (as defined below) to order Gallo products, provide fulfillment and shipment information, and track those orders and shipments; and a shipment notification system that allows our Trade Partners to print bar code labels to be affixed to each unit they ship to Gallo distributors. The Portal may also make available to our Trade Partners certain Gallo Property (as defined below) for use on your company's website and/or product catalogue, solely for the purpose of marketing and selling authorized Gallo products and only if, and during the time period that, specific permission is granted by Gallo. "Portal Customers" means certain distributors, suppliers and trade networks with which Gallo has a business agreement ("Trade Partners") and Gallo employees. References to "we" or "us" or "Gallo" refer to E. & J. Gallo Winery and our affiliates, subsidiaries, brands, service providers and designees as deemed appropriate by us. The terms "you" or "your" refer to the individual(s) accessing the Portal and (other than in the case of a Gallo employee) the Trade Partner on whose behalf those individual(s) are doing so.

### **Compliance with Terms**

By accessing the Portal, you agree to these Terms of Use and our Portal Privacy Policy (contained herein) as well as any other legal notices, terms and policies on this Portal, as may be modified at any time by us (together referred to as "Terms"), all of which are expressly incorporated herein by this reference. You agree to use the Portal only in accordance with the Terms. If you do not agree with the Terms, do not use the Portal. If you disagree with the Terms or are dissatisfied with the Portal, your sole remedy is to discontinue using the Portal. If you are not a Gallo employee and your company is not a Trade Partner, you must not attempt to access or use the Portal.

### **Amendment and Entire Agreement**

We may amend or terminate any Terms at any time and such amendment or termination will be effective at the time we post the revised Terms on the Portal. Each time you use the Portal, it is your responsibility to review the Terms for updates. Your continued use of the Portal after we have posted revised Terms means you accept such revised Terms. The Terms, together with any separate written agreement between you and Gallo governing the business relationship between the parties ("Gallo Business Agreement"), are the entire agreement between you and Gallo with respect to your use of the Portal and any Gallo Property. If there is a conflict between these Terms of Use and the Gallo Business Agreement, the Gallo Business Agreement shall control solely as to the subject matter of such agreement. For example, if a Trade Partner enters into a purchase order with Gallo, the terms of the purchase order shall govern the terms of sale of the Gallo products that are the subject of the purchase order. By way of another example, any employment agreement (including any employment policies incorporated therein) between Gallo and any Gallo employee would govern the terms of such employee's employment with Gallo.

### **Term of Access**

We may terminate your right to access the Portal at any time, for any or no reason, with or without prior notice or explanation, and without liability. Even after your right to access the Portal is terminated, the Terms will remain in effect and you will remain bound by them except that your right to use the Portal will terminate.

### **Passwords and Account Information**

Trade Partners (and, if applicable, Gallo employees) are required to register in order to use the Portal, and, when you register, you will be asked to choose a username and password. You are solely responsible for maintaining the confidentiality of your account information and for any activity under your account. All information or orders entered, through and under your password(s) will be deemed to have been received from you. All orders will be deemed to be made at the time and in the form received by Gallo. You are not permitted to allow anyone else to use your username and password to log into the Portal. You agree immediately to notify Gallo, and to cooperate with Gallo, if you become aware of:

- a) Any suspected loss or theft of your access password(s); or
- b) Any suspected unauthorized use of or access to your account, your password(s) or the Portal; or
- c) Any receipt of confirmation of an order that you did not place, or any similarly inaccurate or conflicting report or information.

Trade Partners are responsible for the access and use of the Portal, any Gallo Property and Gallo Services by their administrators, employees and other users ("Users"). Upon the reassignment or termination of any of your Users who may have had access to the

Portal, you will take all steps necessary to terminate such User's access to the Portal and secure any Gallo Property from access or use by such User. Such steps shall include, but are not limited to, your removing the affected User's i.d. and credentials from the Portal, or such other steps as deemed necessary or appropriate by Gallo in its sole discretion to prevent unauthorized access by such former User.

### **Confidential Information**

You agree not to copy, disclose or use any Confidential Information (defined below) except as authorized by the Terms. Any copies of Confidential Information shall remain the property of Gallo and/or its original owner and shall contain any confidential notices that appear on the original. Portal Customers do not acquire any rights in Confidential Information except the limited usage rights described in these Terms of Use. You agree to take all reasonable steps to maintain the confidentiality of the Confidential Information. Upon any termination of your access to the Portal or upon Gallo's earlier request, you must cease using and return or destroy all Confidential Information in your possession or control.

"Confidential Information" means all trade secrets, non-public information and any information, Gallo Services or Gallo Property which Gallo or third parties protect against unrestricted disclosure or which is labeled confidential or a reasonable person would consider confidential (including all copies thereof), to which you are provided access through the Portal, pursuant to software downloads or other delivery of Gallo Services. The availability of the functionality to download or export Confidential Information from the Portal is not a waiver of confidentiality hereunder.

### **Your Use of the Portal**

Gallo grants you a non-transferable, non-exclusive, limited, revocable license to access and use the Portal, to view and, where expressly permitted by these Terms of Use or your Gallo Business Agreement, download and use certain Gallo Property contained on the Portal, strictly for use of the Gallo Services in accordance with these Terms of Use. Use of the Portal and any Gallo Property for any other purpose is prohibited. Other than the foregoing limited use license, no other rights or licenses are granted by Gallo hereunder. You are solely responsible for providing and maintaining all equipment, software (other than software expressly provided by Gallo on the Portal for your use) and services needed to access and use the Portal in accordance with the Terms. You agree not to use the Portal or any Gallo Property for any unlawful purpose. Except as authorized by the Terms, you agree not to copy, reverse engineer, translate, modify, sell, distribute or make derivative works of any Gallo Property. All Gallo Property available for download must be used in the form made available on the Portal and may not be altered or modified in any way. You agree not to use the Portal for any use involving the processing of data of other persons or entities. You agree not to attempt to obtain or access any information other than that information to which Gallo intentionally provides you access, and not to attempt to obtain or access any purchase orders other than your company's purchase orders with Gallo. You will ensure that your hardware, software, data and systems used to access the Portal are free of worms, viruses, trojan horses or any other routine or engine that could disable, erase or otherwise harm or enable unauthorized access to the Portal or Gallo's hardware, software, data or systems.

### **Intellectual Property**

The Portal and all data, images, content and other information contained on the Portal or accessed through the Portal, pursuant to software downloads or other delivery of Gallo Services, including our trademarks, logos, trade names, trade dress, product images, text, graphics, Portal functionality and Confidential Information (collectively, "Gallo Property"), will remain the sole and exclusive property of Gallo (or its licensors, as applicable) and is protected by United States and international copyright, patent, trademark, trade secret and other intellectual property laws. You agree to comply with any restrictions relating to your use of such Gallo Property and to only use such Gallo Property as specified in the Terms or by Gallo directly. Our trademarks and trade dress may not be used in connection with any other party's product or service in any manner that is likely to cause confusion among customers or in any manner that disparages us. You will not take any action inconsistent with our ownership of the Gallo Property or challenge Gallo's rights in or attempt to register the Gallo Property or any mark or logo substantially similar thereto. Your use of the Gallo Property inures solely to Gallo's benefit. If at any time you acquire any rights in, or trademark registrations or applications for, the Gallo Property by operation of law or otherwise in any country or jurisdiction, you hereby assign and agree to assign immediately upon our request such rights, registrations, or applications to Gallo, along with any and all associated goodwill. You agree to reproduce, and not to alter or remove, any copyright notice, trademark symbol or proprietary legend on any Gallo Property. You further agree to comply with any trademark use or other usage guidelines provided by Gallo from time to time. You agree to comply with reasonable requests by Gallo to protect Gallo's rights in the Gallo Property and the Portal. Any ideas, comments, ratings, reviews, content, suggestions, feedback or other submissions (collectively, "Feedback") you provide to Gallo relating to or through the Portal will be the sole property and confidential information of Gallo, and you agree to assign and do hereby assign all right, title and interest in and to such Feedback to Gallo, including all intellectual property and proprietary rights therein. You further agree to assist Gallo in perfecting and enforcing such rights, at Gallo's request. You acknowledge and agree that any violation directly or indirectly by you of this section or the licenses granted in these Terms of Use would cause Gallo irreparable harm for which Gallo shall have the right to immediate and permanent injunctive relief without the necessity of proving actual damages or posting bond or other security, which relief shall be in addition to all other remedies available to Gallo in law and equity. Gallo may revise or terminate the licenses granted in these Terms of Use at any time without advance notice or liability to you.

### **Your Communications with the Portal**

You consent to receive communications from us electronically. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that those communications be in writing. The Portal may provide you with the capability to send electronic communications, such as e-mail, directly to Gallo or Gallo's representative and to interact within applicable areas of the Portal. You agree to the following terms with respect to your use of any electronic communications through the Portal:

- a) You will not transmit information or orders to Gallo using electronic communications except through those electronic features designated by Gallo for those express purposes. You acknowledge that Gallo will not act upon any information or orders transmitted through electronic communications other than those you transmit through the designated features.
- b) Gallo may, but is not obligated to, review or retain your electronic communications for, among other reasons, monitoring the quality of service you receive, your compliance with the Terms or the security of the Portal. Your electronic communications are submitted on a non-confidential basis and Gallo is entitled to disclose your electronic communications as it deems appropriate or necessary.
- c) You will not use any electronic communication feature of the Portal for any purpose that is unlawful, abusive, harassing, libelous, defamatory, obscene or threatening, or injurious or detrimental to the Portal.
- d) You agree not to submit to or via the Portal any information that infringes upon or violates the privacy rights, trademarks, copyrights or other intellectual property or proprietary rights of others.
- e) You acknowledge that data submitted to or via the Portal, including confidential order, pricing, shipment, and invoicing information, may be accessed by unauthorized third parties when communicated using the Internet or any other electronic means and that Gallo is not liable for any security breach. To reduce this risk, whenever you access the Portal you agree to use the highest level data security protocol supported by the Portal.
- f) Gallo has the right, but is not obligated to, monitor the Portal to determine your compliance with the Terms, with any Gallo Business Agreement, and with applicable laws.

### **Orders; Shipment Notifications**

For Trade Partners who use the Portal to place orders, you acknowledge that it may not be possible to change or cancel an order, shipment notification or other communication once you have placed it. Any attempt you make to change or cancel an order, shipment notification or other information is simply a request. Gallo will not be liable to you if Gallo is unable or fails to change or cancel your order or change the shipment notification or other communication for any reason whatsoever. If you wish to try to change or cancel your order, shipment notification or other communication, you agree to call Gallo's Customer Services representative at the applicable telephone number designated by Gallo on the Portal. If Gallo is unable or unwilling to change or cancel such information or order, you agree that you are bound by the terms of the original order you placed, or the terms of the shipment notification or other communication as originally entered by you. If you use the Portal's shipment notification system, you agree to fulfill orders in accordance with the information provided in your shipment notifications, and to affix the appropriate bar code labels to each item in your shipment, as provided through the Portal.

### **Third Party Software**

The Portal may include or provide links or access to third party software or websites ("TPS") or other software that may be downloaded by you for your use with (or relating to) the Portal. You are solely responsible for downloading, properly using and supporting TPS (and any other such software), and for compliance with any and all terms of the applicable license agreement relating to such TPS (or other software). You are also solely responsible for any equipment, devices, hardware, applications or other support supplied by third parties that you use in conjunction with the Portal. Gallo provides no warranty for TPS or any other software, equipment, devices, hardware, applications or other support and disclaims all liability relating thereto.

### **Portal Availability**

Access to the Portal may be limited or unavailable during periods of peak demand, systems upgrades, maintenance, or for other reasons. If the Portal is unavailable or delayed at any time, you agree to use alternative means to obtain information from or communicate with Gallo, such as calling a Gallo Customer Services representative. Gallo is not liable if you are unable to access your information or order through the Portal for any reason. When you use the Portal to place an order, you acknowledge that a Gallo Customer Services Representative might not review your order and you also may not have the opportunity to ask questions or otherwise interact with a Gallo Customer Services representative. By placing an order through the Portal, you voluntarily assume any risk that may result from the lack of human review of your order in exchange for the potentially greater convenience of Internet access.

### **Disclaimers**

**The Portal, Gallo Services and Gallo Property are provided "AS-IS" and "AS AVAILABLE" without representation or warranty of any kind, including any implied warranties of merchantability, fitness for a particular purpose, non-infringement or security.** Your use of the Portal is at your own risk. Under no circumstances shall Gallo be responsible for any loss or damage, including personal injury or death, resulting from use of the Portal.

Gallo cannot guarantee and does not promise any specific results from use of the Portal. Gallo Services and Gallo Property in promotional material or on the Portal do not constitute any guarantee or warranty.

Gallo assumes 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 communication by you. Gallo is 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 Portal or combination thereof, including any injury or damage to your or to any person's computer, software, or other property related to or resulting from participation or downloading materials in connection with the Portal. We are not responsible for any damage to your computer, software, modem, telephone or other property resulting from your use of the Portal. 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.

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

IN NO EVENT SHALL GALLO BE LIABLE FOR ANY DAMAGE, CLAIM OR LOSS INCURRED BY YOU, INCLUDING 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, ARISING OUT OF THE PORTAL, GALLO SERVICES OR GALLO PROPERTY. 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 THESE TERMS OF USE ARE FOR ANY REASON HELD UNENFORCEABLE OR INAPPLICABLE, YOU AGREE THAT OUR AGGREGATE LIABILITY SHALL NOT EXCEED ONE HUNDRED U.S. DOLLARS (\$100).

#### **Indemnification**

You agree to indemnify and hold Gallo, its subsidiaries, and affiliates, and their respective officers, agents, partners and employees, harmless from any loss, liability, cost, expense, claim, or demand, including reasonable attorneys' fees, relating to or arising out of your use of the Portal and/or arising from your breach of the Terms.

#### **Portal Privacy Policy**

E. & J. Gallo Winery and its affiliated companies and subsidiaries (collectively referred to here as "we," "our," or "Gallo") created this Privacy Policy to inform our distributors, suppliers and trade networks about our practices regarding collection, use, and disclosure of personally identifiable information ("personal data") that we collect from them when they use the Portal. While the Portal or other materials may include links or references to non-Gallo websites, materials, or entities, this Privacy Policy does not apply to those non-Gallo websites, materials, or entities unless otherwise indicated.

#### **Your Consent**

You should read this entire Privacy Policy before submitting information to Gallo or using the Portal. Whenever you submit information via the Portal or otherwise to Gallo, whether online or offline, you consent to the collection, use, and disclosure of that information in accordance with this Privacy Policy.

#### **Information Collection and Use**

Your personal data is collected by Gallo whenever you submit such information to the Portal (for example, when logging on). Information collected from you may include, without limitation, your contact information (company name, individual name, address, and telecommunications numbers, e-mail address), distributor or supplier identification number (if applicable), and authorized representative name(s). When you provide information using the Portal, the information you submit is used internally by Gallo for the following types of activities, among other things: track and verify compliance with applicable laws, agreements and policies, and analyze, prepare and respond to marketing and sales performance reports, plans, and strategies, reviewing and planning capital, energy and MRO projects and technology projects, and analyzing, preparing and responding to marketing and sales performance reports, plans, and strategies. This information may be shared with third parties, including without limitation affiliates, partners, distribution centers, consultants, shippers and financial institutions, for the above types of purposes. Under some circumstances, information may also be used or disclosed to third parties such as governmental agencies for law enforcement and compliance purposes, and when appropriate to identify, contact or bring legal action against someone who may be causing injury to or interference with Gallo's, or others', rights or property.

As do most websites, this Portal uses cookies and may use other automated information collection means. Cookies are information about you from the Portal that is stored on your hard drive. Cookies save you time because you do not need to manually reenter the information stored on your hard drive. Cookies also help Gallo upgrade the Portal by showing when and how users utilize the Portal. Cookies may be combined by Gallo with other personal data already submitted. Your web browser in its default mode probably accepts cookies from this Portal and all others. If you wish, you can usually change the setting so that cookies are not accepted by your browser. However, if you do so the Portal may not function correctly, or at all. The Portal may also use IP addresses for the above purposes, and to analyze trends, administer the website, track users' movement, and gather broad demographic information for aggregate use. We may use web beacons (also known as Internet tags or clear GIFs) on our websites

to access and set cookies and otherwise help us to better understand how users are moving through the Portal. Information provided by the web beacon includes the computer's IP address, the type of browser being used, and the time that the web beacon was viewed. We may also use web beacons in emails and newsletters so that we know when such communications have been opened and to otherwise help us tailor our communications

Except for the types of uses set forth in this Agreement, personal data submitted to Gallo will not be distributed or published. You can request correction of purported inaccuracies in the information on the Portal by contacting the appropriate person indicated on the Portal. However, with respect to errors in an order, the order may be filled before a correction can be implemented.

You agree that Gallo may notify and communicate with you via email (and/or attachments thereto) to your email address of record, or via any other means permitted by this Portal Privacy Policy or elsewhere in the Terms, regarding any matter regarding the Portal or your use thereof. You recognize and understand that email sometimes fails to transmit or be received. This consent will remain in effect until revoked by you or Gallo (revocation may take several days to place into effect, and in the interim you will continue to receive email notices). You agree to maintain a valid email address. If your email address changes, you agree to notify Gallo immediately. Gallo is not responsible for undelivered electronic communications.

### **Security**

Gallo takes appropriate steps to protect personal data from loss, misuse, and unauthorized access, disclosure, alteration, or destruction, whether in transmission or storage. Please keep in mind, however, that there is no such thing as perfect security, and no Internet transmission is ever completely secure or error-free. Moreover, you are responsible for maintaining the confidentiality of any user name and password you use, and you should log off when you finish each session using the Portal. This Portal Privacy Policy is not intended to and does not create any contractual or other legal rights on behalf of any third party.

### **How To Contact Us for More Information**

If you have any questions about this Portal Privacy Policy or our information practices on this Portal, please contact us by emailing or calling us:

[DataPrivacy@ejgallo.com](mailto:DataPrivacy@ejgallo.com) OR 1-888-295-0247

### **Changes to This Portal Privacy Policy**

If this Portal Privacy Policy changes, the revised policy will include a new effective date at the top of these Terms of Use and will be posted on this page. Be sure to check the Portal Privacy Policy whenever you submit personal data.

### **Miscellaneous**

These Terms of Use and all matters arising out of it will be governed by the laws of California without reference to any choice of law principles. Any dispute arising out of these Terms of Use, the Portal, the Portal Privacy Policy, Gallo Services or Gallo Property may be litigated only in a state or federal court having jurisdiction and venue in Sacramento County or in the Eastern District of California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms of Use. Gallo may assign the Terms, in whole or in part, to a related entity or to a third party. Any failure by Gallo to exercise or enforce any right or provision of these Terms of Use shall not operate as a waiver of such right or provision. The section titles in these Terms of Use and Portal Privacy Policy are for convenience only and have no legal or contractual effect. All references to "including", "includes" or words of similar import shall not be construed as limiting and shall be deemed to be immediately followed by "without limitation". If any provision of these Terms of Use is unlawful, void or unenforceable, that provision is deemed severable and does not affect the validity and enforceability of any remaining provisions.