



# Terms and Conditions of Use

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## TERMS OF USE

PHIL'S BBQ, INC. AND ALL AFFILIATED CORPORATE ENTITIES AND SUBSIDIARIES, ("Phil's BBQ"), AS A CONVENIENCE TO YOU, GRANTS YOU ACCESS TO ITS WEBSITE, ACCESSIBLE VIA [WWW.PHILSBBQ.NET](http://WWW.PHILSBBQ.NET), [WWW.PHILSBBQ.COM](http://WWW.PHILSBBQ.COM), AND ALL ITS SUBDOMAINS (COLLECTIVELY, THE "SITES"), AND USE OF ITS APPLICATIONS (HEREINAFTER REFERRED TO AS THE "APPS"), CONDITIONED ON YOUR ACCEPTANCE OF THE TERMS, CONDITIONS AND NOTICES CONTAINED HEREIN (THE "TERMS OF USE") (TOGETHER WITH OUR COOKIE POLICY, PRIVACY POLICY, TERMS OF SALE AND ANY

OTHER DOCUMENTS REFERRED TO HEREIN). FOR THE PURPOSES OF THESE TERMS OF USE, "CONTENT" MEANS, COLLECTIVELY, ANY TEXT, IMAGES, GRAPHICS, SOFTWARE, SOURCE CODE, APPS, SPECIFICATIONS, AUDIO FILES, VIDEOS, ARTICLES, TRADEMARKS, LOGOS AND OTHER INFORMATION OR CONTENT AVAILABLE THROUGH THE SITES THAT ARE NOT SUBMISSIONS (AS THAT TERM IS DEFINED BELOW), INCLUDING BUT NOT LIMITED TO THE DESIGN, STRUCTURE, SELECTION, COORDINATION, EXPRESSION, "LOOK AND FEEL" AND ARRANGEMENT OF SUCH CONTENT.

## **ACCEPTANCE OF TERMS**

PLEASE READ THESE TERMS OF USE AND PHIL'S BBQ PRIVACY POLICY CAREFULLY. BY USING THE SITES AND APPS, ON ANY COMPUTER, MOBILE PHONE, TABLET, CONSOLE OR OTHER DEVICES, YOU AGREE TO THESE TERMS OF USE, AND YOU CONSENT TO THE COLLECTION, USE AND DISCLOSURE OF INFORMATION AS DESCRIBED IN THESE TERMS OF USE AND OUR PRIVACY POLICY. IF YOU DO NOT AGREE TO THESE TERMS OF USE AND THE TERMS AND CONDITIONS OF OUR PRIVACY POLICY, YOU MUST EXIT THE SITE IMMEDIATELY AND DISCONTINUE ANY USE OF THE SITES, OUR APPS AND ANY OF THEIR CONTENT. IF YOU DO NOT AGREE TO THESE TERMS AND THE PHIL'S BBQ PRIVACY POLICY, THEN YOU WILL NOT BE ABLE TO DOWNLOAD AND USE THE APPS. YOUR USE OF THE SITES AND APPS SHALL BE DEEMED TO BE YOUR AGREEMENT TO ABIDE BY EACH OF THE TERMS SET FORTH BELOW. PHIL'S BBQ CAN CHANGE THESE TERMS AT ANY TIME BY POSTING UPDATED TERMS OF USE ON THE SITES OR BY SENDING REGISTERED USERS AN EMAIL NOTICE OF THE CHANGES. IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOU SHALL CEASE USING THE SITES AND APPS. IF YOU DO NOT CEASE USING THESE SITES AND APPS, YOU WILL BE DEEMED TO HAVE ACCEPTED THE CHANGE. THESE TERMS OF USE DO NOT ALTER IN ANY WAY THE TERMS OR CONDITIONS OF ANY OTHER AGREEMENT YOU MAY HAVE WITH PHIL'S BBQ OR ITS AFFILIATES FOR OTHER PRODUCTS OR SERVICES.

Our Privacy Policy, which is incorporated into these Terms of Use by this reference, further describes the collection and use of information on this Platform. Notwithstanding anything else to the contrary contained in these Terms of Use, Phil's BBQ's use of any personally identifiable information (name, etc.) you provide via the Site shall be governed by our Privacy Policy. For further information regarding Phil's BBQ's protection of your personal information, please refer to our [PRIVACY POLICY](#) also located on our website. You are expected to check this page from time to time to take notice of any changes Phil's BBQ has made, as they are binding on you.

## **USE AND RESTRICTIONS**

The Sites and Apps may be accessed and used only by individuals who can form legally binding contracts under applicable laws, who are 18 years of age or older, and who are not barred from using the Sites and Apps under applicable laws.

For residents of Korea or those accessing the site from Korea, you must be 19 years of age or older.

The Sites and Apps are provided solely as a convenience to you for non-commercial use. You may access and use the Sites and Apps only in accordance with all applicable laws and regulations and with these Terms of Use. You acknowledge and agree that Phil's BBQ, in its sole discretion and without notice or any further obligation to you, may temporarily suspend or permanently discontinue and refuse any and all current and future, access to or use of the Sites and Apps. You further agree that you will not: (a) resell for commercial purposes products purchased through use of the Sites; (b) resell or make commercial use of the Sites or Apps or Content therein; (c) modify, distribute, transmit, display, perform, reproduce, publish, license, create derivative works of, transfer, or sell any Content; (d) collect or use any product listings or descriptions; (e) use any data mining, robots, or similar data gathering and extraction methods from the Sites and Apps; (f) other than for your use of the Sites and Apps as expressly permitted in these Terms of Use, access or attempt to access any systems or servers on which the Sites and Apps are hosted or modify or alter the Sites and Apps in any way; (g) forge headers, create a false identity or otherwise manipulate identifiers in order to deceive others or disguise the origin of any Content or other information transmitted to or via the Sites or Apps; (h) use, frame or utilize framing techniques to enclose any Phil's BBQ trademark, logo or other proprietary information (including the images found at the Sites and the Apps, the content of any text or the layout/design of any page or form contained on a page) without Phil's BBQ's express written consent; or (i) use any meta tags or any other "hidden text" utilizing a Phil's BBQ name, trademark, or product name without Phil's BBQ's express written consent.

Any unauthorized use of the Sites and Apps will terminate the permission or license granted by these Terms of Use, will result in you being barred from use of the Sites and Apps, and may violate applicable law including copyright laws, trademark laws (including trade dress), and communications regulations and statutes.

**For EU residents only:** If accessing the Sites from outside of the EU (excluding the UK), Norway and Switzerland, the Contents on the Sites are displayed solely for the purpose of promoting Phil's BBQ's products available within the European Union (excluding the UK), Norway and Switzerland.

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All trademarks, service marks, trade names, logos and trade dress, whether registered or unregistered (collectively the "Marks") that appear on the Sites and Apps are proprietary to Phil's BBQ or such Marks' respective owners. You may not display or reproduce the Marks other than with the prior written consent of Phil's BBQ, and you may not remove or otherwise modify any trademark notices from any Content. The Marks are protected by trademark, trade dress, copyright, and various other intellectual property rights and unfair competition laws.

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## **COPYRIGHT AND TRADEMARK INFRINGEMENTS**

Phil's BBQ respects the intellectual property rights of others, and we ask you to do the same. Phil's BBQ may, in appropriate circumstances and at our discretion, terminate service and/or access to the Sites and Apps for users who infringe the intellectual property rights of others. If you believe that your work is the subject of copyright infringement and/or trademark infringement and appears on our Sites or Apps, please provide Phil's BBQ's designated agent the following information required by the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act, 17 U.S.C. §512 ("DMCA"):

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- Identification of the copyrighted and/or trademarked work claimed to have been infringed, or, if multiple works at a single online site are covered by a single notification, a representative list of such works at that site.
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled at the Sites or Apps, and information reasonably sufficient to permit Phil's BBQ to locate the material.
- Information reasonably sufficient to permit Phil's BBQ to contact you as the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which you may be contacted.
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright and/or trademark owner, its agent, or the law.

- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Phil's BBQ's agent for notice of claims of copyright or trademark infringement on the Sites and Apps can be reached as follows:

**By email:** pconners@philssbbq.com

**By mail:**

Phil's BBQ  
Attention: Brand Protection  
3750 Sports Arena Boulevard, Suite 6  
San Diego, CA 92110 U.S.A.

## **TERMS AND CONDITIONS OF SALE**

All merchandise or product sales from the Sites and Apps are governed by any terms of sale that may be posted on the Sites and Apps or available in our Agreements with you. You should refer to our terms and conditions of sale to learn more about applicable product warranties, our return policy, and shipping terms. By ordering and/or accepting delivery of the products, you agree to be bound by these terms and conditions of sale. The terms and conditions of sale are subject to change without prior notice at any time, in Phil's BBQ's sole discretion so you should review the terms and conditions of sale each time you make a purchase. Additional information may be found in our FAQ and online shopping sections of the Sites.

## **ELECTRONIC COMMUNICATIONS**

You consent to receive electronic communications from Phil's BBQ either in the form of email sent to you at the email address listed on your account or by communications posted on the Sites and Apps for any purpose. You acknowledge and agree that any electronic communication in the form of such email or posting on the Sites and Apps shall satisfy any legal requirement that such communication be in writing. You agree that Phil's BBQ may use and/or disclose information consistent with its Privacy Policy.

## **SUBMISSIONS**

You acknowledge that you are responsible for the information, profiles, opinions, messages, comments, photos, videos, product or services feedback or ideas and any other content or material that you submit, upload, post or otherwise make available on or through the Sites and Apps, including any third-party sites (such as Facebook, Instagram, YELP), (each a "Submission") and through the services available in connection with the Sites and Apps, and that you, and not Phil's BBQ, have full responsibility for each such Submission you make, including its legality, reliability, appropriateness, and trademark, copyright and other intellectual property ownership. Before making a Submission, you must ensure that you either own all intellectual property rights or are otherwise in a position to grant a License (as defined below) to Phil's BBQ.) You represent that the posting and use of your Submission on or through the Service does not violate, misappropriate or infringe on the rights of any third party, including, without limitation, privacy

rights, publicity rights, copyrights, trademark and/or other intellectual property rights; you agree to pay for all royalties, fees, and any other monies owed by reason of Submission you post; and you have the legal right and capacity to enter into these Terms of Use in your jurisdiction.

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You agree that Phil's BBQ is free to use a Submission for the purpose of providing you and others with use of the Sites and Apps and their functionality and providing you with the associated products and services, and, unless the rights in such submission are assigned to Phil's BBQ under these Terms of Use, you grant Phil's BBQ a sub-licensable, transferable, perpetual, nonexclusive, worldwide, royalty-free license ("License") to (in any media, whether now known or not currently known or invented) link to, utilize, use, publicly perform, publicly display, reproduce, distribute, edit, adapt, modify and prepare derivative works of the Submission.

In addition, to the extent any Submission contains your or any other person's name, likeness, voice or biographical information ("Personal Rights"), you must comply with any applicable legislative requirements and hereby grant and will cause such other person to grant to Phil's BBQ a License to (in any media, whether now known or not currently known or invented) exploit or use such Personal Rights for any advertising or marketing of Phil's BBQ products and services (in any media, whether now known or not currently known or invented). Submissions shall be considered non-confidential and Phil's BBQ is under no obligation to treat such Submissions as proprietary information except pursuant to Phil's BBQ's Privacy Policy applicable to personally identifiable information. **SUBJECT TO THE LICENSES GRANTED IN THESE TERMS OF USE, YOU RETAIN OWNERSHIP OF ANY COPYRIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS IN YOUR SUBMISSIONS.**

You represent and warrant that: (i) you own all Submissions posted by you on or through the Sites and Apps or otherwise have the right to grant the Licenses to Phil's BBQ set forth in this section, and (ii) your Submission is accurate and not misleading and (iii) the posting of your Submissions on or through the Sites, Apps does not violate the privacy rights, publicity rights, trademark rights, copyrights, contract rights or any other rights of any person or entity or violate any applicable law, rule, regulation or order. You agree to pay for all royalties, fees, damages and any other monies owing to any person by reason of any Submissions posted by you to or through the Sites and Apps. When submitting Submissions to or otherwise using the Sites, Apps and/or the services, you agree not to, without limitation:

- use the Sites and Apps in a manner that uses technology or other means to access the Sites and Apps, or other content that is not authorized by Phil's BBQ;
- use a false e-mail address, impersonate any person or entity, or otherwise mislead as to the origin of content.
- take any action that imposes or may impose (in Phil's BBQ's sole discretion) an unreasonably or disproportionately large load on Phil's BBQ's infrastructure;
- attempt to gain unauthorized access to Phil's BBQ computer network or user accounts;
- encourage conduct that would constitute a criminal offense, or that gives rise to civil liability;

- attempt to damage, disable, overburden, or impair Phil's BBQ servers or networks;
- fail to comply with applicable third-party terms;
- defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others;
- use racially, ethnically, or otherwise offensive language;
- discuss or incite illegal activity;
- use explicit/obscene language or solicit/post sexually explicit images (actual or simulated);
- post anything that exploits children or minors or that depicts cruelty to animals;
- post any copyrighted, trade-secret, proprietary, patented proprietary or trademarked materials without the express permission from the owner of such rights; post any person's name, likeness, voice or biographical information without the express permission from such person (or if that person is a minor, from that person's parent or legal guardian);
- disseminate any unsolicited or unauthorized advertising, promotional materials, 'junk mail', 'spam', 'chain letters', 'pyramid schemes', or any other form of such solicitation;
- use any robot, spider, scraper or other automated means to access the Sites or Apps; and
- alter the opinions, goals, profiles or comments posted by others on the Sites and Apps.

This list of prohibitions provides examples and is not complete or exclusive. Phil's BBQ reserves the right in its sole discretion to (a) terminate your ability to post to the Sites or Apps (or the services) and (b) refuse, delete, modify, edit or remove any Submissions; with or without cause and with or without notice, for any reason or no reason, or for any action that Phil's BBQ determines is inappropriate or disruptive to this Sites and Apps or to any other user of the Sites, Apps and/or services. Phil's BBQ may report to law enforcement authorities any actions that may be illegal, and any reports it receives of such conduct. When legally required or at Phil's BBQ's discretion, Phil's BBQ will cooperate with law enforcement agencies in any investigation of alleged illegal activity on the Sites, Apps or on the Internet.

Phil's BBQ takes no responsibility and assumes no liability for any Submissions posted or uploaded by you or any third party, or for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity you may encounter. As a provider of interactive services, Phil's BBQ is only a forum and is not liable for any statements, representations, or Submissions provided by its users in any public forum or personal home page.

**These prohibitions do not require Phil's BBQ to monitor, police or remove any Submissions or other information submitted by you or any other user.**

Phil's BBQ prohibits crawling, scraping, caching or otherwise accessing any content on the Sites and Apps via automated means, including but not limited to, user profiles and photos (except as may be the result of standard search engine protocols or technologies used by a search engine with Phil's BBQ's express consent).

It is Phil's BBQ's policy not to accept or consider content, information, ideas, suggestions or other materials other than those we have specifically requested and to which certain specific terms,

conditions and requirements may apply. This is to avoid any misunderstandings if your ideas are similar to those we have developed or are developing independently. Accordingly, Phil's BBQ does not accept unsolicited materials or ideas, and takes no responsibility for any materials or ideas so transmitted. If, despite our policy, you choose to send us content, information, ideas, suggestions, or other materials, you further agree that Phil's BBQ is free to use any such content, information, ideas, suggestions or other materials, for any purposes whatsoever, including, without limitation, developing and marketing products and services, without any liability or payment of any kind to you.

## **MODIFICATIONS**

Any Content offered or posted on the Sites and Apps is subject to modification or discontinuation at any time and from time to time without notice or obligation to you.

## **INDEMNIFICATION**

You agree to defend, indemnify and hold harmless Phil's BBQ, its affiliates and their respective directors, officers, employees and agents against any losses, liabilities, claims, expenses (including attorney's fees) as a result of (i) your Submission or your access to or use of the Sites and Apps; (ii) your breach or alleged breach of these Terms of Use; (iii) your violation of any third-party right, including without limitation, any intellectual property right, publicity, confidentiality, property or privacy right; (iv) your violation of any laws, rules, regulations, codes, statutes, ordinances or orders of any governmental and quasi-governmental authorities, including, without limitation, all regulatory, administrative and legislative authorities; or (v) any misrepresentation made by you. This means that you will be responsible for any loss of damage we suffer as a result of your breach of these Terms of Use.

## **LINKS TO THIRD PARTY WEBSITES**

The Sites and Apps may contain links to websites and other resources operated by third parties other than Phil's BBQ. Such links are provided solely as a convenience to you. Phil's BBQ does not control such websites, and is not responsible for the content, products, services or information offered by any third parties. The inclusion of links to such websites on the Sites and Apps does not imply any endorsement of any website or the content, products or services offered, advertised, endorsed or promoted by any third party, or of any company or person. If you decide to access any third party websites or acquire any third party products or services, you do so entirely at your own risk, and you may be subject to the terms and conditions and the privacy policies imposed by such third parties.

## **VIRUSES, HACKING AND OTHER OFFENSES**

You must not misuse our Sites by knowingly introducing viruses, Trojans, worms, logic bombs or other material which is malicious or technologically harmful. You must not attempt to gain unauthorized access to our Sites, the server on which our site is stored, or any server, computer or database connected to our Sites. You must not attack our Sites via a denial or service attack or distributed denial or service attack. We will report any such breach to the relevant law enforcements authorities, and we will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, your right to use our Sites will cease immediately. We will not be liable for any loss or damage caused by a distributed denial-of-service attack, viruses or



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THE SITE, APPS, SUBMISSIONS AND ANY CONTENT PROVIDED VIA THE SITE AND APPS, INCLUDING LINKS, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITH NO WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, PHIL'S BBQ DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, WITH RESPECT TO THE SITE, APPS, SUBMISSIONS, THE CONTENT AND ANY PRODUCTS OR SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, FREEDOM FROM ERRORS, OMISSIONS, COMPUTER VIRUSES OR OTHER MALICIOUS OR UNAUTHORIZED CODE OR PROGRAMS, AND IMPLIED WARRANTIES OR CONDITIONS ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. IN ADDITION, PHIL'S BBQ DOES NOT REPRESENT OR WARRANT THAT THE SITE, APPS, SUBMISSIONS, CONTENT OR ANY PRODUCTS, SERVICES OR ANY OTHER INFORMATION ACCESSIBLE VIA THE SITE OR APPS IS SECURE, ACCURATE, COMPLETE OR CURRENT OR THAT ANY PARTICULAR PRODUCTS OR INVENTORY WILL BE AVAILABLE AT ANY PARTICULAR STORE. AS A CONDITION OF YOUR USE OF THE SITE AND APPS, YOU WARRANT TO PHIL'S BBQ THAT YOU WILL NOT USE THE SITES AND/OR APPS FOR ANY PURPOSE THAT IS UNLAWFUL OR PROHIBITED BY THESE TERMS OF USE. NOTHING IN THESE TERMS OF USE SHALL AFFECT YOUR LEGAL RIGHTS UNDER APPLICABLE CONSUMER LAWS.

IN ADDITION, THE SITES AND APPS MAY CONTAIN TYPOGRAPHICAL ERRORS OR INACCURACIES AND MAY NOT BE COMPLETE OR CURRENT. PHIL'S BBQ THEREFORE RESERVES THE RIGHT TO CORRECT ANY ERRORS, INACCURACIES OR OMISSIONS (INCLUDING AFTER AN ORDER HAS BEEN SUBMITTED) AND TO CHANGE OR UPDATE INFORMATION AT ANY TIME WITHOUT PRIOR NOTICE. PLEASE NOTE THAT SUCH ERRORS, INACCURACIES OR OMISSIONS MAY RELATE TO PRICING AND AVAILABILITY, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, PHIL'S BBQ RESERVES THE RIGHT TO CANCEL OR REFUSE TO ACCEPT ANY ORDER PLACED BASED ON INCORRECT PRICING OR AVAILABILITY INFORMATION. MINOR DIFFERENCES IN COLOR AND OTHER VARIATIONS IN PRODUCTS ARE POSSIBLE AS A RESULT OF DIFFERENT IMAGE ACQUISITION, DISPLAY TECHNOLOGIES OR OTHER TECHNICAL REASONS. PHIL'S BBQ IS NOT LIABLE FOR THESE VARIANTS AND DEVIATIONS.

IN ADDITION, IF AN ITEM BECOMES UNAVAILABLE FOR WHATEVER REASON AFTER AN ORDER IS ACCEPTED, PHIL'S BBQ MAY TERMINATE THE ORDER BY GIVING YOU WRITTEN NOTICE. IN SUCH EVENT, PHIL'S BBQ WILL CONTACT YOU TO ARRANGE FOR A REFUND OR PROVISION OF CREDIT AGAINST FUTURE PURCHASE.

## **LIMITATION OF LIABILITY**

PHIL'S BBQ AND ITS PARENT, AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, LICENSORS AND THIRD PARTY PARTNERS WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR REVENUES OR FAILURE TO REALIZE EXPECTED SAVINGS, OR ANY DAMAGES WHATSOEVER, WHETHER OR NOT SUCH PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY, INCLUDING, WITHOUT LIMITATION, ARISING OUT OF OR IN CONNECTION WITH ANY LOSS OR OTHER DAMAGES IN CONNECTION WITH ANY UNAVAILABILITY OR NONPERFORMANCE OF THE SITE, APPS, ERRORS, OMISSIONS, VIRUSES AND MALICIOUS CODE, UNLESS SUCH LOSS OR DAMAGES ARE CAUSED DIRECTLY BY PHIL'S BBQ'S FRAUD, RECKLESSNESS, GROSS NEGLIGENCE OR NEGLIGENCE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**FOR NEW JERSEY RESIDENTS OR OTHER PERSONS ACCESSING THIS SITE FROM NEW JERSEY:** You agree that all disputes arising from your account, your use of the Sites and Apps, and your Submissions and any Personal Rights contained therein shall be decided solely by an arbitrator, pursuant to the Consumer Arbitration Rules of the American Arbitration Association. By agreeing to arbitration, you understand and agree that You are waiving Your rights to maintain other available resolution processes, such as a court action or administrative proceeding, to settle any disputes. Furthermore, YOU AGREE TO WAIVE ANY RIGHT TO A JURY TRIAL in any dispute with Phil's BBQ, its subsidiaries and/or affiliates.

BY ACCESSING THE SERVICE, YOU UNDERSTAND THAT YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

**FOR NEW ZEALAND RESIDENTS OR OTHER PERSONS ACCESSING THIS SITE FROM NEW ZEALAND:** WE UNDERSTAND THAT, IN SOME JURISDICTIONS WARRANTIES, DISCLAIMERS AND CONDITIONS MAY APPLY THAT CANNOT BE LEGALLY EXCLUDED. ACCORDINGLY, IN RELATION TO GOODS AND SERVICES SUPPLIED BY PHIL'S BBQ IN NEW ZEALAND, TO THE FULLEST EXTENT PERMITTED BY LAW, PHIL'S BBQ'S LIABILITY FOR BREACH OF ANY CONSUMER GUARANTEE, WHICH CANNOT BE EXCLUDED, IS LIMITED AT THE OPTION OF PHIL'S BBQ TO:

(a) IN THE CASE OF SERVICES SUPPLIED OR OFFERED BY PHIL'S BBQ, WHICH ARE NOT OF A KIND ORDINARILY ACQUIRED FOR PERSONAL, DOMESTIC OR HOUSEHOLD USE OR CONSUMPTION (i) THE SUPPLY OF THE SERVICES AGAIN, OR (ii) THE PAYMENT OF THE COST OF HAVING SERVICES SUPPLIED AGAIN; AND

(b) IN THE CASE OF GOODS SUPPLIED OR OFFERED BY PHIL'S BBQ, WHICH ARE NOT OF A KIND ORDINARILY ACQUIRED FOR PERSONAL, DOMESTIC OR HOUSEHOLD USE OR CONSUMPTION (i) THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS, (ii) THE REPAIR OF SUCH GOODS; (iii) THE PAYMENT OF THE COST OF THE REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS, OR (iv) THE PAYMENT OF THE OCST OF HAVING THE GOODS REPAIRED.

You agree that any claim you may have arising out of or related to your relationship with Phil's BBQ must be filed within one year after such claim arose; otherwise, your claim is permanently barred.

## **MANDATORY BINDING ARBITRATION**

We believe that binding arbitration offers a prompt and efficient way to resolve any dispute, controversy or other claim between us (whether arising under any legal or equitable theory, and given the broadest meaning enforceable under law, a "Dispute").

To the maximum extent permitted by law, you and we agree that any and all Disputes will be resolved exclusively and finally using binding arbitration and will only be conducted on an individual basis and not in a class, consolidated, representative or similar action, except as provided below. There is no judge or jury in arbitration, the discovery and other procedures are more limited and less formal, and court review of an arbitration award is limited. The arbitrator must follow these Terms of Use and can award the same damages and relief as a court in an individual proceeding (including attorney's fees).

Acceptance of these Terms of Use constitutes a waiver of your right to litigate the Dispute in any court, the opportunity to be heard by a judge or jury, and the ability to proceed in a class, consolidated, representative or similar action, except as provided below.

### **Pre-Arbitration Claim Resolution**

Before you can commence any proceeding as to a Dispute, you must first give us an opportunity to resolve the Dispute by emailing us at [PCONNERS@PHILS\\_BBQ.COM](mailto:PCONNERS@PHILS_BBQ.COM) a notification that contains the following information: (1) your name, (2) your address, (3) a written description of your claim in the Dispute, and (4) a description of the specific relief you seek. If we do not resolve the Dispute within 45 days after receiving your notification, then you may pursue the Dispute in arbitration or, if you have opted out of arbitration as provided under "Right to Opt Out", in court.

### **Right to Opt Out**

Notwithstanding the above, you may choose to pursue a Dispute in court and not by arbitration if you opt out of arbitration within 30 days from the date that you first consent to these Terms of Use (the "Opt-Out Deadline"). To opt out of arbitration, simply email us at [PCONNERS@PHILS\\_BBQ.COM](mailto:PCONNERS@PHILS_BBQ.COM) with the following information: (1) your name; (2) your address; and (3) a clear statement that you do not wish to resolve Disputes with us through binding arbitration. Please be assured that any decision to opt out of arbitration will have no adverse effect on your relationship with us. But we do have to enforce the Opt-Out Deadline so keep in mind that any opt out request

received after the Opt-Out Deadline will not be valid and you will be required to pursue any Dispute in arbitration.

## **Arbitration Procedures**

If the Dispute is not resolved as provided under Pre-Arbitration Claim Resolution, either you or we may initiate arbitration proceedings. The American Arbitration Association (“AAA”), [www.adr.org](http://www.adr.org), will arbitrate all disputes, and the arbitration will be conducted before a single arbitrator. All issues shall be for the arbitrator to decide, including the scope of the arbitration provisions in these Terms of Use. The AAA rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. These Terms of Use govern in the event of any conflict with the applicable arbitration rules.

Under no circumstances will class action procedures or rules apply to the arbitration, and the arbitrator may not consolidate more than one person’s Disputes or otherwise preside over any form of a class, consolidated, representative or similar action, unless both you and we specifically agree following initiation of the arbitration. The arbitration will be conducted in English, closed to the public and confidential. All related records shall be permanently sealed, except as necessary to obtain court confirmation of the arbitration award.

The U.S. Federal Arbitration Act (“FAA”) may govern the arbitrability of Disputes. However, the arbitrator will apply applicable substantive law consistent with the FAA and the applicable statute of limitations or conditions precedent to suit.

Nothing herein will preclude us from seeking provisional remedies in aid of arbitration (such as orders to stay a court action or compel arbitration), temporary restraining orders or similar relief, or redress for potential violations of our intellectual property rights, from any court of competent jurisdiction.

## **Arbitration Award**

The arbitrator may award on an individual basis any relief that would be available pursuant to applicable law and will not have the power to award relief to, against or for the benefit of any person who is not a party to the proceeding. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. Such award will be final and binding on the parties, except for any right of appeal provided by the FAA, and may be entered in any court having jurisdiction over the parties for purposes of enforcement.

## **Location of Arbitration**

Unless we mutually agree on a different location, arbitration shall occur in San Diego, California, U.S.A. You waive any right to claim that such location is an inconvenient forum, and you agree not to sue us or bring arbitration in any other forum. To minimize the costs and burdens of associated with arbitration, you and we agree that the arbitration will be conducted by telephone, online and/or be solely based on written submissions, the specific manner to be chosen by the party initiating the arbitration. You and we further agree that the arbitration will not require any

personal appearance by the parties or witnesses unless otherwise mutually agreed in writing by the parties.

### **Payment of Arbitration Fees and Costs**

So long as you place a request in writing prior to commencement of the arbitration, we will pay all arbitration filing, administration and arbitrator fees and associated costs and expenses in any Dispute involving claims totaling less than \$10,000. You will be responsible for all additional fees and costs that you incur in the arbitration, including the fees and costs of any attorney or expert witness you use. In addition to any fees and costs recoverable under applicable law, if you provide notice and negotiate in good faith with us as provided in the section above titled "Pre-Arbitration Claim Resolution" and the arbitrator concludes that you are the prevailing party in the arbitration, you will be entitled to recover reasonable attorney's fees and costs as determined by the arbitrator.

### **Waiver of Class Action, Jury and Other Rights**

You acknowledge and agree that, subject to your ability to pursue a Dispute in court by complying with the procedures above under "Right to Opt Out," your acceptance of these Terms of Use constitutes your waiver of certain rights, including your right to litigate a Dispute in a public court before a judge or jury; your ability to participate in a class, consolidated, representative or similar action; your ability to conduct discovery and other procedures except under AAA rules; and your right to certain remedies, relief or other.

### **GOVERNING LAW**

All litigation, court proceedings, arbitration proceedings, mediation proceedings, lawsuits, court hearings and other hearings or actions initiated in connection with the Sites, Apps and/or the Content must and will be venued exclusively in San Diego, California, U.S.A. These Terms of Use and the relationship between you and Phil's BBQ will be governed by the laws of the State of California, and the federal law of the United States of America, without giving effect to principles of conflict of laws of any jurisdiction. The International Sale of Goods Act of British Columbia and the United Nations Convention on Contracts for the International Sale of Goods will not apply in any way to these Terms of Use or to the transactions contemplated by these Terms of Use.

### **MISCELLANEOUS**

If any provision of these Terms of Use is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect the effectiveness or validity of any provision in any other jurisdiction, and these Terms of Use will be reformed, construed and enforced in such jurisdiction as if such provision had never been contained herein. Any headings or titles herein are for convenience only.

### **LANGUAGE**

The official language of these Terms of Use exclusively shall be, and all communications and agreements between Phil's BBQ and you and any proceedings in connection with these Terms of Use and/or your use of the Sites and Apps, exclusively shall be made in, the English language.

Phil's BBQ and you waive any rights we may have under any other law to have these Terms of Use written in another language, and any translation of this Terms of Use will be for convenience only.

## **NO PARTNERSHIP**

You agree that no joint venture, partnership, employment, or agency relationship exists between you and Phil's BBQ as a result of these Terms of Use, our Privacy Policy or any use of the Sites and Apps. Phil's BBQ's performance of these Terms of Use is subject to existing laws and legal process, and nothing contained in these Terms of Use or our Privacy Policy is in derogation of Phil's BBQ's right to comply with law enforcement requests or requirements relating to your use of the Sites and Apps or information provided to or gathered by Phil's BBQ with respect to such use.

## **ENTIRE AGREEMENT**

These Terms of Use, Cookie Policy and our Privacy Policy constitute the entire agreement between you and Phil's BBQ with respect to the Sites and Apps, and they supersede all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and Phil's BBQ with respect to the Sites and Apps.

## **CONTACT US**

For any questions concerning these Terms and Conditions of Use, Phil's BBQ's Privacy Policy, or any other inquiries, you may contact us at [privacyofficer@philsbbq.com](mailto:privacyofficer@philsbbq.com), or toll free at 1-877-25-PHILS (74457), or by mail at the following address:

Phil's BBQ  
Attn: General Counsel  
3750 Sports Arena Boulevard, Suite 6  
San Diego, CA 92110 U.S.A.