Terms & Conditions for Wine Sales

(updated July 31, 2015)
These are the terms and conditions whereby you (the Winery) will allow Zero Link Markets, Inc., a California corporation doing business as VinoShipper.com ("VinoShipper"), to sell and distribute wine products and/or provide order processing and compliance services through its proprietary website. Please review these terms and conditions carefully. If, after doing so, you agree to accept these terms and conditions and to enter into a relationship with VinoShipper, click on the button "I Accept These Terms and Conditions" during the registration process. If you do so, you will be entering into a legally-binding contract (also referred to as the "Agreement") and can continue the registration and listing process. If you do not accept any of these terms and conditions, do not click on the "I Accept" button.

1. **Definitions**
    - 1.1 "Confidential Information" means information about your or VinoShipper's business or activities that is proprietary and confidential, which includes all business, financial, technical and other information of a party marked or designated by such party as "confidential" or "proprietary," and also all or information which, by the nature of the circumstances surrounding the disclosure, should in good faith be treated as confidential. Confidential Information shall not include any information that: (a) is in the public domain; (b) is received from a third party not known to the receiving party to be under a duty not to disclose such information; (c) was known to the receiving party prior to its disclosure by the disclosing party; (d) is independently developed by the receiving party; or (e) is required by law to be disclosed by the receiving party.
    - 1.2 "Customer" means any person or entity that purchases Wine via the VinoShipper Website.
    - 1.3 "Wine" means the wine as listed by you on the Website and delivered by you in accordance with the terms of this Agreement.
    - 1.4 "Winery Trademarks" means your trademarks, trade names and logos uploaded by you to the Website.
    - 1.5 "Website" means VinoShipper's proprietary website, which is located at www.VinoShipper.com, or any other Internet-based software marketplace operated by VinoShipper and its subsidiaries or successors.
2. **Licenses**
    - 2.1 By listing Wine, you grant VinoShipper a non-exclusive license and right to:
        1. Offer for sale and sell the Wine to Customers;
        2. Reproduce, publish, display and digitally perform on the Website any proprietary information provided by you for the purposes of promoting the Wine; and
        3. Utilize the Winery Trademarks in connection with the promotion, marketing, and sale of the Wine in a manner reasonably specified by you.
    - 2.2 VinoShipper agrees not to remove, alter, cover or obfuscate any label placed on the Wine by you.
    - 2.3 To the extent permitted by law, VinoShipper grants you a limited, revocable, and non-exclusive right to create a hyperlink to the Website home page (or any sub-pages) so long as the link does not portray VinoShipper, its affiliates, or their products or services, in a false, misleading, derogatory, or otherwise offensive manner.
3. **Your General Obligations**

- 3.1 You will deliver by upload to the Website the current information of each Wine you wish VinoShipper to offer for sale following execution of this Agreement.
- 3.2 You will provide by upload to the Website the applicable information for each required field as directed by the wine upload dialog for each Wine.
- 3.3 You will agree to the UPS Shipping Agreement that specifies obligations required for labeling of shipments.
- 3.4 If requested, you will provide a copy of your federal basic permit and state licenses.
- 3.5 You will provide all updates as to availability of the Wine as soon as reasonably practical.
- 3.6 Upon receipt of a shipping notification, you or your order fulfillment facility will ship the Wine as indicated on the instructions. If you are not able to ship the Wine for any reason you must notify VinoShipper immediately.
- 3.7 You agree (i) to comply with the terms and conditions for linking to the Website set forth above and (ii) to remove promptly any link to the Website if requested to do so by VinoShipper for good reason.
- 3.8 If you communicate directly with any Customer you will provide an opportunity for the Customer to opt out of receiving any further communications and will promptly and diligently honor any opt out requests. All such communications by you will be in compliance with all applicable laws, regulations and codes of practice or conduct.
- 3.9 When selling under your Winery license and permits you will be responsible for complying with all direct shipping and other laws and regulations applicable to the sale by the Winery and for completing all applicable compliance returns for those transactions processed via VinoShipper. The States for which the Winery maybe responsible for are shown in Appendix D.

4. **VinoShipper's General Obligations**
    - 4.1 VinoShipper intends to make good-faith, commercially reasonable efforts to maintain and actively promote the Website but will have the right in its sole discretion to close the Website or to cease distributing of any particular wine. The Website is made available on an "as is" and "as available" basis. VinoShipper does not warrant that the Website will be secure, uninterrupted, or error-free, or that defects in the Website or any related services provided by VinoShipper, if any exist from time to time, will be corrected.
    - 4.2 VinoShipper will be responsible for processing refunds in accordance with the Refund Policy specified below.
    - 4.3 VinoShipper will be responsible for complying with all direct shipping and other laws and regulations applicable to the sales of Wine by VinoShipper and for completing all applicable compliance returns for sales made by VinoShipper.
    - 4.4 VinoShipper will be responsible for all marketing efforts of the VinoShipper.com website.
    - 4.5 VinoShipper will permit you to link to the Website subject to the terms and conditions for linking specified above.
    - 4.6 Wine Products will be listed on VinoShipper's server upon the completion of their upload to the Website and the fulfillment of your other obligations pursuant to this Agreement.
    - 4.7 Appendix D will change from time to time depending on how State laws are changed, VinoShipper will notify you of any additions to or deletions from this list.
    - 4.8 VinoShipper will provide information necessary for Winery reporting when the winery has transactions on its own licenses.
5. **Wine Purchases & Payment**
    - 5.1 VinoShipper will forward orders for Wine [in accordance with the process described on the Website in the Help Section under "Winery"]. Orders will be deemed

to have been accepted when the Wine ordered has been shipped. You must immediately notify VinoShipper if you are unable to accept the order.

- 5.2 VinoShipper will remit payments due to you within thirty (30) days of the date of sale. For these purposes, the date of sale is the date of shipment of the Wine. Payments not received within forty-two (42) days of the date of sale will be subject to a one percent (1%) charge on the unpaid balance and an additional one percent (1%) for each thirty (30) days thereafter. You will have private online access to reports stating the number of bottles of Wine sold via VinoShipper and the calculation of payments due to you.
- 5.3 When VinoShipper is the seller of the wine. The price payable by VinoShipper for the Wine purchased from you will be equal to the price at which the Wine is offered for sale by VinoShipper less an amount calculated by reference to the number of bottles sold in any one transaction as set forth in Appendix A below and less a transaction fee as set for in Appendix C. With respect to each transaction, VinoShipper will pay you a fee for the provision by you of shipping services as specified in Appendix B below. These terms may be amended by VinoShipper in its sole discretion at any time and from time to time; provided, however, that VinoShipper will publish such amendments on the Website at least thirty (30) days before they become effective and send to you advice notification thereof.
- 5.4 When Winery is the seller of the wine. The monies payable by VinoShipper for the Wine sold by you on the VinoShipper platform will be equal to the price at which the Wine is listed for sale on VinoShipper less an amount calculated by reference in Appendix C. These terms may be amended by VinoShipper in its sole discretion at any time and from time to time; provided, however, that VinoShipper will publish such amendments on the Website at least thirty (30) days before they become effective and send to you advice notification thereof.
- 5.5 Your account will be debited for Wine returned to VinoShipper for refund providing a return authorization has been granted by you.
- 5.6 You agree to notify VinoShipper promptly of any reductions or increases in the recommended prices of any Wine. You will honor VinoShipper's price protection policy of automatically issuing a credit to Customers who have purchased a Wine within a two-week period prior to a price reduction for such Wine. VinoShipper will adjust Customer accounts and your account to reflect the difference in price. Prices for Wine cannot be increased retrospectively.
- 5.7 VinoShipper agrees to maintain adequate books and records relating to the distribution of the Wine to Customers. Such books and records will be available at the principal office of VinoShipper for inspection by you or your representative at your expense during normal business hours, for the purpose of determining the accuracy of payments remitted to you pursuant to this Agreement for the twelve (12) month period immediately preceding such audit. You will have the right to conduct such an audit no more than once a year upon thirty (30) days advance written notice to VinoShipper.

6. **Wine Services**
    - 6.1 Depending on wine sale and shipping regulations, certain transactions may require VinoShipper to act as a service provider and not as a reseller of Wine Product. The States this is maybe applicable to are shown in Appendix D.
7. **Refund or Return Policy**
    - 7.1 With respect to orders you have accepted, you will be responsible for delivering to UPS the correct Wine in an appropriate package addressed to the Customer in accordance with the UPS Shipping Agreement. You are not responsible for breakages (otherwise than where proven to be as a result of your own negligence) or for any other risks associated with transportation, including damage to the Wine caused by heat or cold or delays associated with failure by the Customer to sign for the

delivery. Wine that is returned by UPS for any reason will be returned to VinoShipper.

8. **Term & Termination**
    - 8.1 This Agreement will continue in effect for one (1) year from the date VinoShipper accepts this Agreement (the "Initial Term"). This Agreement will be automatically renewed for successive additional one (1) year terms (each, a "Renewal Term") unless terminated by either party upon 30 days written notice prior to the expiration of the Initial Term or any Renewal Term. Notwithstanding the foregoing, VinoShipper may terminate this Agreement at any time upon 30 days written notice if, in the exercise of its sole discretion, VinoShipper decides to close the Website or to cease distributing the product category or categories which include the Wine.
    - 8.2 This Agreement may be terminated by a party "for cause" immediately by providing written notice. Any one or more of the following shall constitute "cause": (i) if the other party ceases to do business, or otherwise terminates its business operations (except as permitted under Section 13.2); (ii) if the other party shall fail to promptly secure or renew any license, registration, permit, authorization, or approval for the conduct of its business in the manner contemplated by this Agreement or if any such license, registration, permit, authorization, or approval is revoked or suspended and not reinstated within thirty (30) days; (iii) if the other party materially breaches any provision of this Agreement and fails to fully cure such breach within thirty (30) days of written notice describing the breach; or (iv) if the other party becomes insolvent or seeks protection under any bankruptcy laws, creditor's arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other party and is not dismissed within ninety (90) days.
    - 8.3 Upon termination of this Agreement for any reason, VinoShipper will immediately cease selling the Wine or offering it for sale. VinoShipper will remit all amounts due to you within 30 days of such termination. You agree to honor all sales processed before such termination becomes effective.
    - 8.4 You are free to suspend, limit or allocate sales by VinoShipper of any Wine at any time in accordance with the procedures specified in the "Help" Section.
9. **Warranties**
    - 9.1 You represent that you have the right and authority to enter into this Agreement and to grant VinoShipper the rights to offer for sale and sell the Wine granted in this Agreement.
    - 9.2 You warrant to VinoShipper that you have and will continue to have for the term of this Agreement, including any Renewal Terms, all rights, title, and interest in the Wine or have obtained and will continue to have for the term of this Agreement, including any Renewal Term, the right to grant the licenses set forth in this Agreement. You represent that the Wine and Winery Trademarks do not now and will not during the term of this Agreement, including any Renewal Terms, infringe upon or misappropriate the proprietary rights of any third party.
    - 9.3 VinoShipper represents that it has the right and authority to enter into this Agreement and that the Website and any of its proprietary content does not itself infringe upon or misappropriate the proprietary rights of any third party.
10. **Indemnification**
    - 10.1 Each party will defend, indemnify, and hold the other harmless from and against any and all liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable legal fees and expenses) associated with or incurred as a result of any claim, action, or proceeding instituted against such party arising out of or relating to the acts or failure to act of the other party, or any of its affiliated companies, agents, employees, or other related parties, under this Agreement including, without limitation, actions, claims, or proceedings related to: (i)

performance of their respective rights and obligations under this Agreement; or (ii) breach of any of the terms of this Agreement or any of the representations and warranties contained herein.

- 10.2 Each party will promptly notify the other in writing of any notice or knowledge it receives of any claim as set forth in Section 11.1. Upon acknowledgment by the other party of its indemnification obligation with respect to such claim, such party will give the other all reasonably necessary information and assistance and the authority to evaluate and defend such claim, subject to such party's right to participate in the defense thereof at its own expense. Any settlement of such claim shall be subject to such party's reasonable approval.

11. **Limitation of Liability**
    - 11.1 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST BUSINESS PROFITS, LOSS OF DATA, INTERRUPTION OF USE OF SERVICES) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.
    - 11.2 YOU ACKNOWLEDGE THAT VINOSHIPPER HAS MADE NO REPRESENTATIONS OR WARRANTIES AS TO THE VOLUME OF SALES THAT IT EXPECTS TO ACHIEVE WHETHER WITH RESPECT TO YOUR WINE SPECIFICALLY OR OVERALL SALES GENERALLY. YOU FURTHER ACKNOWLEDGE THAT VINOSHIPPER IS ONLY LICENSED OR PERMITTED TO SELL AND/OR SHIP WINES TO THOSE STATES LISTED IN THE "HELP" SECTION.
12. **Confidential Information**
    - 12.1 Except as expressly and unambiguously allowed herein, the receiving party will hold in confidence and not use or disclose any Confidential Information.
    - 12.2 Each party acknowledges that its breach of this Section would cause irreparable injury to the other for which monetary damages are not an adequate remedy. Accordingly, each party will be entitled to injunctive relief and other equitable remedies in the event of a breach by the other party with respect to Confidential Information.
13. **General Provisions**
    - 13.1 Arbitration. Any controversy or claim arising out of or relating to this Agreement or the breach thereof will be settled by arbitration conducted in San Francisco, California in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and the award of such arbitrator(s) will be binding and conclusive upon the parties. The arbitration award may be entered as a final judgment in any court having jurisdiction thereover. Any dispute as to whether a controversy or claim is subject to arbitration will be submitted as part of the arbitration proceeding. To the fullest extent permitted by law, the right to trial by jury is hereby waived.
    - 13.2 Assignment. This Agreement may not be assigned by you or by operation of law to any other person or entity without the express written approval of VinoShipper. VinoShipper will be entitled to assign this Agreement in the event of a merger, acquisition, joint venture, or a sale of substantially all of its assets, or any similar transaction.
    - 13.3 Enforceability. If any provision of this Agreement is, becomes or is deemed invalid, illegal, or unenforceable under the applicable laws or regulations of any jurisdiction, such provision will be deemed amended to conform to such laws or regulations or, if such amendment is not possible without materially altering the intention of the parties, it will be stricken. In either event, the remainder of this Agreement will remain in full force and effect.

- 13.4 Entire Agreement. The parties have read this Agreement and agree to be bound by its terms, and further agree that it constitutes the complete and entire agreement of the parties and supersedes all previous communications, oral or written, and all other communications between them relating to the license and to the subject hereof. No representations or statements of any kind made by either party, which are not expressly stated herein, will be binding on such party.
- 13.5 Governing Law. This Agreement and all disputes arising under or relating to this Agreement will be construed in accordance with and governed by the internal laws of the State of California, excluding conflict of law rules, as applied to agreements entered into and performed entirely within the State of California between California residents.
- 13.6 Modification. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any related purchase order, invoice, confirmation, or similar form, the terms and of this Agreement shall prevail. VinoShipper may amend this Agreement by publishing such amendment on the Website at least thirty (30) days before such amendment becomes effective and sending notification thereof to you.
- 13.7 Notices. All notices and demands under this Agreement by you must be made in writing and served by personal service or by registered or certified mail, return receipt requested, to VinoShipper at: Zero Link Markets, Inc., 228 Windsor River Road, #111, Windsor, California 95492-9595, Attn: Legal Department. VinoShipper may notify you of changes in the purchase price payable to the Winery or amendments to this Agreement (including amendments to this Section 13.7) by posting such changes or amendments to the Website as provided in Sections 5.3, 5.4 and 13.6, respectively. VinoShipper may give other notices or make demands under this Agreement by personal service, by registered or certified mail, return receipt requested, or by e-mail sent to you the address provided by you in connection with uploading the Wine. Except as provided in Sections 5.3, 5.4 and 13.6, notices and demands will be deemed given upon the earlier of receipt or five (5) days after mailing or e-mailing as provided herein. Either party may designate a different address for service by providing notice in accordance with this Section.
- 13.8 Obligations Surviving Termination. Sections 9.1, 9.2, 9.3, 10.1, 10.2, 11.1, 12.1 and 12.2, and also any other Sections which by their nature should survive, will survive the termination of this Agreement by either party for any reason.
- 13.9 Relationship of the Parties. In offering for sale and selling the Wine and otherwise exercising the licenses and rights granted in Section 2.1, VinoShipper shall be acting as an independent contractor and not as your agent. VinoShipper will have no right, power or authority to act or to create any obligation, express or implied, on your behalf.
- 13.10 Titles. Titles and headings are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify, or place any construction upon any of the provisions of this Agreement.

Appendix A: Handling Charge

Bottle Qty	Charge
1	$ 3.50
2	$ 3.50
3	$ 6.00
4	$ 6.00
5	$ 7.00
6	$ 7.00
7	$ 8.00
8	$ 8.00
9	$ 8.00
10	$ 8.00
11	$ 8.00
12	$ 8.00
Per Case	$ 8.00

Appendix B: Packing Credit

Bottle Qty	Credit
1	$ 3.50
2	$ 3.50
3	$ 6.00
4	$ 6.00
5	$ 7.00
6	$ 7.00
7	$ 8.00
8	$ 8.00
9	$ 8.00
10	$ 8.00
11	$ 8.00
12	$ 8.00
Per Case	$ 8.00

Appendix C: Service Fees

4.75% + .75¢ per Bottle
For sales in a winery's home state or sales using the winery's direct ship permits.

8.75% + .75¢ per Bottle
For sales within VinoShipper's network.

Appendix D: States Winery is responsible for wine sale reporting

- Arizona
- Arkansas
- California
- Colorado
- Connecticut
- Georgia
- Hawaii
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Montana
- New Jersey
- New York
- North Carolina
- Pennsylvania
- Rhode Island
- South Carolina
- South Dakota
- Tennessee
- Texas
- Vermont
- Washington
- Wisconsin