

These Terms and Conditions of Use ("Terms and Conditions of Use") apply to your access to, and use of, any Dickey's Barbecue Pit® ("Dickey's") website, mobile application, and online service or program where these Terms and Conditions of Use are posted or linked ("Dickey's Online Services"). These Terms and Conditions of Use are a legal and binding agreement between you and Dickey's, and, as applicable, its subsidiaries, affiliates, and related entities ("Affiliates") (Dickey's and its Affiliates are referred to herein, as the context may require, as "we", "us", or "our"). These Terms of Use govern your use of the Dickey's Online Services, which includes the programs, offers, content, information, services, and features made available through the Dickey's Online Services. If you do not agree to these Terms and Conditions of Use, then you should not use the Dickey's Online Services.

**Your use of the Dickey's Online Services is at your risk. If you are dissatisfied with the Dickey's Online Services in any way, its programs, offers, contents, features, or these Terms and Conditions of Use, your sole and exclusive remedy is to discontinue accessing and using the Dickey's Online Services.**

#### Modification of Services

Dickey's reserves the right, in its sole discretion, to modify the services from time to time and without notice, including by removing, adding, or modifying Products and/or third-party vendors from the Product Catalog. Dickey's shall have no liability to you for any modification or discontinuation of the services. If you object to any such changes, your sole recourse shall be to cease using the services.

#### Limitations on Your Use of Services

Subject to these Terms and Conditions of Use, Dickey's grants you a limited, revocable right to Access and use the site solely for your own use. You may not attempt, or authorize, encourage, or support others' attempts, to circumvent, reverse engineer, decrypt, break or otherwise alter or interfere with the Online Services. You acknowledge and agree that you may not copy, distribute, sell, resell, or exploit for any commercial purposes any portion of the services, or any products accessible through the services. Dickey's reserves the right to suspend or terminate use of this website or its services by you or other users in its sole discretion.

## Modification of the Agreement

Dickey's may amend, supplement, or modify this agreement from time to time by posting the amended agreement on the site, and you agree to be bound by any such amendment or modification. If you object to any such changes, your sole recourse shall be to cease using the services.

## Termination

If you materially breach the terms of this agreement, Dickey's may suspend your ability to use the services or may terminate this agreement effective immediately and without notice to you.

## User Account

Prior to placing an order from this site, you may establish a user account, but this is not required to place your order. If you establish a user account, it will be accessible upon input of an authorized e-mail address/user name and a designated password. You are responsible for maintaining the security of any user passwords and other account details issued to you for use with the site, and you are also responsible for the integrity and security of the operating environment from which you access the site.

## Children's Privacy and Site Age Limitations

This website is intended for use by persons aged 13 or older, and by your use of this site you affirm that you are at least 13 years of age. In addition, if you are under the age of 18, you are only permitted to use this website with the consent of your parents or an adult guardian. Dickey's will not knowingly allow registration of an account for any person that Dickey's believes to be younger than 13. We also do not collect any personally identifiable information from any persons under the age of 13, and, if we discover that we have been provided any such information, we will delete this information from our records.

## Pricing or Other Information Errors

Although Dickey's strives at all times to maintain the accuracy of information maintained on this site, including pricing information and product details, occasionally pricing or other information errors may occur on this site. In the event that any Dickey's product that is available through this site is mistakenly

listed at an incorrect price or with other incorrect information, Dickey's reserves the right either to refuse or cancel the order or to charge you the correct price when you come to pick up your order.

## Payment and Billing

You acknowledge and agree that for each order you place through the service, the full cost of Products you order (for which prices are subject to change without notice) will be assessed against your credit card, charge card, restaurant-specific gift card, or restaurant-specific cash card. You acknowledge and agree that a SMS or web browser command originating from your account constitutes an authorization for Dickey's to charge this amount and you assume all liability for and shall promptly pay any and all charges. Without limiting the foregoing, you acknowledge and agree that you will pay assessed charges for any and all orders placed from your account, regardless of whether you actually receive the Products. Dickey's will provide you with reasonable notice of any material modification in the fees charged for the services, which notice may be provided by posting the new fee schedule on the site.

## Abandoned Orders

If you place an order with us and fail to pick it up, Dickey's reserves the right to charge you the amount due [including by charging your credit card, if applicable].

## Overview of Big Yellow Cup Club

Dickey's Barbecue Restaurants, Inc. (the "Sponsor") Big Yellow Cup Club (the "Program") is an email marketing database through which individuals ("Participants") who have registered to subscribe ("Participant Account") receive brand messaging, store information, promotions, deals and contests from Dickey's Barbecue Pit and all affiliate brands.

### **PARTICIPATION IN THE PROGRAM**

1. The Program is open to legal residents of the fifty (50) United States and District of Columbia who are at least eighteen (18) years of age or older at the time they establish a Participant Account. It is void where prohibited by law.
2. Participation in the Program constitutes each Participant's full and unconditional agreement to these Program Terms and Conditions ("Rules"). Those who do not comply with these Rules may be prohibited from participating in the Program as determined by

Sponsor in its sole discretion. By accepting these Rules and signing up for the Program, you hereby agree to receive email messages from Sponsor regarding your Participant Account.

3. Registration. To enroll in this Program, each Participant must fill out the requisite form ([www.dickeys.com/bycc](http://www.dickeys.com/bycc)). There is a limit of one (1) Participant Account per person/e-mail address, regardless of whether more than one person uses the same e-mail address. The person who is the authorized e-mail account holder of the e-mail address indicated when registering (and who otherwise meets the eligibility criteria) will be deemed the Participant.
4. Participants Personal Information. To learn how Sponsor will use the personal information collected in connection with the Participant Account and/or this Program, read Sponsor's Privacy Policy: [https://www.dickeys.com/docs/privacy\\_policy.pdf](https://www.dickeys.com/docs/privacy_policy.pdf)

## **MODIFICATION AND TERMINATION OF THE PROGRAM**

1. By participating in the Program, Participants hereby agree that Sponsor may modify these Rules, including termination of the Program, with or without notice even though these changes may affect a Participant's ability to receive brand messaging, store information, promotions, deals and contests from Dickey's Barbecue Pit and all affiliate brands. A Participant's continued participation in the Program constitutes his or her acceptance of any changes to these Rules.

## **INACTIVITY AND FORFEITURE**

1. If a Participant fails to claim any offers or promotions within the time specified on such deal, the Participant will forfeit the deal received through his/her Participant Account, without compensation.

## **GENERAL TERMS AND CONDITIONS**

1. Sponsor reserves the right to suspend or discontinue the eligibility of any person who uses, or, in the case of suspension, is suspected of using, the Program in a manner inconsistent with these Rules or any federal or state laws, statutes or ordinances. In addition to suspension or discontinuance of the Program eligibility, Sponsor shall have the right to take appropriate administrative and/or legal action, including criminal prosecution, as it deems necessary in its sole discretion.
2. Any attempt by any person to undermine the legitimate operation of the Program may be a violation of criminal and civil law, and, should such an attempt be made, Sponsor reserves the right to seek damages from any such person to the fullest extent permitted by law. Sponsor's failure to enforce any of these Rules shall not constitute a waiver of that, or any other, provision.
3. All questions or disputes regarding eligibility for the Program, or a Participant's compliance with these Rules, will be resolved by Sponsor in its sole discretion.

4. Sponsor is not responsible for any incorrect or inaccurate information supplied by Participants while participating in the Program.
5. Participants are responsible for the payment of all taxes which may result from participation in the Program.
6. Participants are responsible for maintaining updated contact information in their Participant Account. Information contained in the Participant Account may be used to contact Participants.
7. The Program is subject to all applicable laws, rules and regulations.

## **LIMITATION OF LIABILITY**

1. Sponsor, its affiliates, subsidiaries, franchisees, and promotional and advertising agencies are not responsible for any printing or computer error, omission, interruption, irregularity, deletion, defect, delay in operations or transmission, theft or destruction or unauthorized access to or alteration of Program materials or for technical, network, telephone equipment, electronic, computer, hardware or software malfunctions of any kind, or inaccurate transmission of Program information due to technical problems or traffic congestion on the internet, at any web site or any combination thereof.
2. By participating in the Program, each Participant accepts all responsibility for, and hereby releases and agrees to indemnify and hold harmless Sponsor and their respective parent companies, subsidiaries, affiliates, agents, promotion and advertising agencies, franchisees, and each of their respective officers, directors, employees, shareholders, and successors, assigns, and service providers from and against any claims, liabilities, damages, or expenses that may arise from actions taken by such Participant and/or Participant's participation in the Program, or for any harm or injury caused by any third party.
3. **UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, SHALL SPONSOR, ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, INDEPENDENTLY OWNED AND OPERATED DICKEY'S FRANCHISE STORES, SUCCESSORS, ASSIGNS, AND SERVICE PROVIDERS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF PARTICIPATION IN THE PROGRAM OR ANY PURCHASED ITEM, EVEN IF ANY OR ALL OF THE FOREGOING OR ANY OF THEIR AUTHORIZED REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, THEREFORE SUCH EXCLUSIONS MAY NOT APPLY TO YOU. IF SPONSOR IMPROPERLY DENIES A PARTICIPANT ANY REWARD, LIABILITY WILL BE LIMITED TO THE EQUIVALENT FAIR MARKET VALUE OF THE REWARD. BY PARTICIPATING IN THE PROGRAM, A PARTICIPANT WAIVES ANY AND ALL RIGHTS TO BRING ANY CLAIM OR ACTION RELATED TO SUCH MATTERS IN ANY FORUM BEYOND ONE (1) YEAR AFTER THE FIRST OCCURRENCE OF THE**

**KIND OF ACT, EVENT, CONDITION OR OMISSION UPON WHICH THE CLAIM OR ACTION IS BASED.**

4. As a condition of participating in the Program, Participant agrees that, except where prohibited, any and all disputes, claims and causes of action arising out of, or connected with, the Program or any item purchased therein shall be resolved individually, without resort to any form of class action, and exclusively by the appropriate court located in Collin County, Texas. All issues and questions concerning the construction, validity, interpretation and enforceability of these Official Rules, Participant's rights and obligations, or the rights and obligations of Sponsor in connection with the Program, shall be governed by, and construed in accordance with, the laws of the State of Texas, without giving effect to any choice of law or conflict of law rules (whether of the State of Texas or any other jurisdiction), which would cause the application of the laws of any jurisdiction other than State of Texas.
5. If any provision of these Rules is found to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be severed from the remainder of these Rules, which will otherwise remain in full force and effect.

### Text Messaging

Our site may offer you the opportunity to receive text messages, including to participate in promotional programs that use text messaging. If you choose to participate in such promotions, you should be aware that your carrier may charge you standard text messaging rates for each message sent or received. You represent to use that you are the owner or authorized user of the wireless device used to receive or send any text messages related to Dickey's programs, products, or services.

### Disclaimer of Warranties

YOU EXPRESSLY AGREE THAT USE OF THE SERVICES IS AT YOUR OWN RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. DICKEY'S EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, AND NON-INFRINGEMENT. DICKEY'S MAKES NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. YOU UNDERSTAND AND AGREE THAT ANY PRODUCTS YOU OBTAIN THROUGH USE OF THE SERVICES IS DONE AT YOUR OWN RISK, AND DICKEY'S MAKES NO WARRANTY REGARDING ANY DEALINGS WITH OR

TRANSACTIONS ENTERED INTO WITH ANY OTHER PARTIES THROUGH THE SERVICES. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM DICKEY'S OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

## Privacy

Dickey's has an unrestricted right to collect and use any personal information you provide in connection with the services, provided that any such use shall be in accordance with our Privacy Policy available publicly on the website. If you use the Online Services, you are accepting the terms and conditions of our Privacy Policy.

## Indemnification

You agree to indemnify, defend and hold harmless Dickey's, its agents, employees, representatives, licensors, affiliates, officers and directors, from and against any and all claims, liabilities, damages, losses, costs, expenses, fees (including reasonable attorneys' fees and court costs) resulting or arising from any third-party claim in connection with (a) any information you (or anyone accessing the services using your password) submit or transmit through the services, (b) your use of or access to the services, (c) your violation of this agreement, (d) your violation of any rights of any third party, or (e) any viruses, trojan horses, worms, time bombs, cancelbots, spyware, or other similar harmful or deleterious programming routines input by you into the services.

## Intellectual Property

The services contain copyrighted and/or proprietary subject matter that is owned by Dickey's and/or its licensors. All such material is protected by relevant intellectual property laws, including copyright, trademark, patent and/or trade secret laws. Such material may not be modified, reproduced, transmitted, sold, offered for sale, publicly displayed, or redistributed in any way without our prior written permission and the prior written permission of any other applicable rights licensor. All trademarks, slogans and other indicia of origin ("Marks") that appear on or in connection with the services are the property of Dickey's and/or its affiliates, licensors and/or licensees. You are not authorized to use any such Marks.

## No Agency Relationship

Neither these Terms and Conditions of Use, nor any Materials, programs, offers, features, or services of the Dickey's Online Services, create any partnership, joint venture, employment, or other agency relationship between Dickey's, its Affiliates, and you. You may not enter into any contract on our behalf or bind us in any way.

## Third-Party Links

In an attempt to provide increased value to our customers and other site visitors, Dickey's may provide links to sites operated by third parties. However, even if the third party is affiliated with Dickey's, Dickey's has no control over these linked sites, all of which have separate terms and privacy practices, independent of Dickey's. These linked sites are only for your convenience, you acknowledge that you access them at your own risk.

## Entire Agreement, Claims Limitations, and Severability

These terms and Conditions of Use, together with our Privacy Policy and any other applicable terms included within the Dickey's Online Services, and/or the Materials, programs, offers, features, and services made available through the Dickey's Online Services, as each is currently posted on the Dickey's Online Services, constitute the entire agreement between us and you with respect to your use of the Dickey's Online Services and the Materials, and supersede all previous written or oral agreements between us and you with respect to such subject matter. Any cause of action you may have arising out of or relating in any way to the Dickey's Online Services must be commenced within one (1) year after the claim or cause of action arises. If, for any reason, a court of competent jurisdiction finally determines any provision of these Terms and Conditions of Use, our Privacy Policy, or any portion thereof to be unenforceable, such provision shall be enforced to the maximum extent permissible so as to give the intended effect thereof, and the remainder of these Terms and Conditions of Use and Privacy Policy shall continue in full force and effect.

## Miscellaneous

Any legal action, suit, or proceeding arising out of or relating to this agreement, or your use of the services, shall be instituted exclusively in the federal or state courts located in Dallas, Texas. This agreement shall be governed by Texas law, without regard to conflict of law principles. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the services or this agreement must be filed within one year after such claim or cause of action arose or be forever barred. If any provision of this agreement is found by a court of competent jurisdiction to be unenforceable, the parties agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and that the enforceable provisions of this agreement shall remain in full force and effect.