

High Seas Elite Club Terms and Conditions

Last modified: September 6, 2019

These High Seas Elite Club Terms and Conditions ("Terms and Conditions") govern FK Restaurant Group LLC's ("FK," "our," "us," or "we") High Seas Elite Club ("Club"). The Club is intended for individual use only, not businesses or other entities or groups. One Club membership card ("Card") will be issued per Member, and each individual is only allowed one membership. Club membership and Cards are non-transferable.

Club members (each a "Member") shall be bound by all the terms and conditions contained herein these Terms and Conditions and by all applicable laws. All discrepancies in Club terms and/or conditions shall be determined at the sole discretion of FK. Federal and state tax liabilities, if any, shall be the sole responsibility of the Member. A MEMBER'S PURCHASE, USE, OR ACCEPTANCE OF CLUB MEMBERSHIP AND/OR A CARD CONSTITUTES ACCEPTANCE OF THESE TERMS AND CONDITIONS. EACH TIME A MEMBER PARTICIPATES IN THE CLUB OR USES A CARD IN ANY MANNER, SUCH MEMBER AGREES TO FK'S THEN-CURRENT TERMS AND CONDITIONS FOR THE CLUB.

Club membership is open only to individuals 18 years of age or older legally residing in the United States. The Club may have tiers of benefits. The number of Members permitted in each tier is limited as determined by FK from time to time and is subject to change at any time without notice. Club Members will be accepted at discretion of FK. Members will be issued a Card upon FK's acceptance of the Member and the Member's payment for membership. FK reserves the right to revoke or deny membership in the Club at any time in its sole discretion.

The fees and benefits of membership in each tier of the Club can be found at <https://www.eatpier48.com/high-seas-elite>; provided, however, FK reserves the right, in its sole discretion, to modify the Club terms, conditions, membership fees, membership requirements, and/or benefits at any time and from time to time without notice, or to terminate the Club at any time upon 30 days' notice. In the event the Club is discontinued, the benefits of a Member shall be redeemable for a period of 30 days after issuance of notice of discontinuation of the Club. Club membership fees are non-refundable, and Club membership may not be cancelled after it is purchased.

The Card may be used to purchase goods and services at any participating FK location until the full balance of the Card is used. Each time a Card is used, we will deduct that amount from the balance of the Card until the full balance of the Card is used. A Card has no cash value. Neither a Card nor Club membership can be resold, transferred, or redeemed for cash, except to the extent required by law. A Member's Card and Club membership will be void if either is resold, transferred, or redeemed for cash. For balance information or to report a lost or stolen Card, call 317-560-4848.

Unless otherwise stated herein these Terms and Conditions, Club membership and a Card are valid for 12 months from the date of issue. Any unused balance on a Card will expire 12 months from the date of issue. An expired balance will not be extended or reinstated. A Card may be used in any dollar amount up to the value of the Card in the Member's account; however, for avoidance of doubt, there is no carry-over balance, and any unused balance amount will be lost at the expiration of 12 months from the date of issue of the Card.

A Member's Card does not need to be presented to use the Card or Club benefits. In lieu of the Card, the phone number identified in the Member's account registration may be provided together with a valid ID for the individual using the Card.

A Member must provide a valid phone number, email address, and other information to register his or her Club account and Card. The information provided during registration will not be sold or given to third parties (except for use for administration of the Club). In addition, by registering for the Club, the Member consents to receiving periodic emails and account balance information from FK. A Member may unsubscribe to these email notices, but FK will not be able to inform such Member about Club benefits, send reminders about the Member's account, or provide other important Club information. A Member is responsible for making any needed Club account or membership information updates (phone number, email address, personal information, etc.). The birthdate that a Member provides at the time of registration for Club membership cannot be changed. Exclusive offers, promotions, and Club updates may be emailed to Members, and FK is not responsible for lost, delayed, or undeliverable email.

Ownership and risk of loss of a Card passes to the Member as soon as the Card is delivered to the designated carrier. We are not responsible for loss, theft, or delay in receipt of a Card, including, but not limited to, due to an incorrect address or other occurrences outside of our control. A Member should protect his or her Card like he or she would protect cash.

FK is not liable for benefits or amounts lost due to fraudulent or unauthorized use of a Card or Member account, whether resulting from a lost or stolen Card or otherwise. Illegal, fraudulent, or other unauthorized use of a Card or Member account, or other activity inconsistent with these Terms and Conditions, may result in termination of Club membership and/or forfeiture of benefits. If a Member suspects someone has copied or stolen such Member's Card, the Member should contact FK immediately. A Card will not be replaced if lost or stolen without proof of purchase. FK also reserves the right to charge a fee for replacement of a Card.

A MEMBER'S USE OF THE CLUB MEMBERSHIP, CARD, AND ANY SERVICES OR ITEMS AFFILIATED WITH THE CLUB OR CARD IS AT THE MEMBER'S OWN RISK AND ARE PROVIDED ON AN "AS IS," "AS AVAILABLE," AND "WITH ALL FAULTS" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER FK NOR ANY PERSON ASSOCIATED WITH FK MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE CARD OR CLUB. WITHOUT LIMITING THE FOREGOING, NEITHER FK NOR ANYONE ASSOCIATED WITH FK REPRESENTS OR WARRANTS THAT THE CARD, CLUB, OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE CARD OR CLUB WILL BE ACCURATE, TIMELY, RELIABLE, ERROR-FREE, OR UNINTERRUPTED, THAT DEFECTS OR ERRORS WILL BE CORRECTED, THAT THE CARD, CLUB, OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE CARD OR CLUB WILL OTHERWISE MEET A MEMBER'S REQUIREMENTS, NEEDS, OR EXPECTATIONS.

TO THE FULLEST EXTENT PROVIDED BY LAW, FK HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE HEREOF. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY A MEMBER FROM US SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS.

TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL FK, ITS AFFILIATES, OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, OR MANAGERS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH FK, THE CLUB, OR A MEMBER'S OR ANYONE'S USE, OR INABILITY TO USE, THE CARD, INCLUDING ANY DIRECT, INDIRECT,

SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE. A MEMBER'S SOLE REMEDY SHALL BE TO TERMINATE SUCH MEMBER'S CLUB MEMBERSHIP OR DISCONTINUE USE OF THE CARD. WITHOUT NEGATING OR LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES SHALL FK'S LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY A MEMBER TO FK FOR CLUB MEMBERSHIP FEES IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

ANY CAUSE OF ACTION OR CLAIM A MEMBER MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS OR THE CLUB MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

Each Member agrees to defend, indemnify, and hold harmless FK, its affiliates, licensors, and service providers, and its and their respective officers, directors, managers, employees, contractors, agents, licensors, suppliers, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or relating to such Member's (i) violation of these Terms and Conditions, (ii) use of the Card and/or Club membership, including, but not limited to, any use of the Club's services and/or products other than as expressly authorized in these Terms and Conditions, (iii) violation of any statutory or common law, or (iv) breach of the rights of any third party.

Member irrevocably grants in perpetuity to FK the absolute right and permission to copyright, use, re-use, reproduce, distribute to the public, publish and republish and to license the right to use, re-use, reproduce, distribute to the public, publish and republish Member's name and/or likeness in its sole discretion, in any and all now known and hereafter existing forms of media or form of distribution, including, but not limited to, websites and social media. Member understands and agrees that Member will receive no compensation for his or her name and/or likeness nor shall Member (or any person by, through, or otherwise acting on Member's behalf) make any claim for compensation of any kind at any time.

Member hereby waives any right that Member may have to inspect and/or approve the finished product or the advertising copy or printed matter that may be used in connection with Member's name and/or likeness or the use to which it may be applied. Member agrees that Member has no rights to the photographs, reproductions, negatives, videos or films, or other media or forms of distribution containing Member's name and/or likeness, and Member further agrees that such materials belong exclusively to FK and to the extent that Member had, has, or will have any right therein, thereto, or thereby Member hereby irrevocably assigns, conveys, or otherwise transfers such right to FK.

MEMBER HEREBY UNCONDITIONALLY RELEASES, DISCHARGES, AND AGREES TO HOLD HARMLESS FK AND ITS EMPLOYEES OR AGENTS, AFFILIATES, SUCCESSORS, SUBSIDIARIES, AFFILIATES, LICENSEES, LEGAL REPRESENTATIVES, AND ALL PERSONS ACTING UNDER ITS PERMISSION OR UPON ITS AUTHORITY FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, OR LIABILITY, AT LAW OR IN EQUITY, WHETHER KNOWN OR UNKNOWN, ANTICIPATED OR UNANTICIPATED, SUSPECTED OR UNSUSPECTED, WHICH MEMBER EVER HAD, NOW HAS, OR MAY HEREAFTER HAVE ARISING BY VIRTUE OF ANY PUBLICATION OF MEMBER'S NAME AND/OR LIKENESS,

INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LIBEL OR SLANDER, INVASION OF PRIVACY, THE RIGHT OF PUBLICITY, COPYRIGHT, OR INFRINGEMENT OR VIOLATION OF ANY PERSONAL OR PROPERTY RIGHTS OF ANY SORT WHATSOEVER.

The Card and Club membership can be used at any accepted location. FK reserves the right to change restaurants and other participating locations at any time.

These Terms and Conditions shall be construed in accordance with and governed by the laws of the United States and the State of Indiana, without reference to their rules regarding conflicts of law. Member hereby irrevocably consents to the exclusive jurisdiction of the state or federal courts in Marion County, Indiana, USA in all disputes arising out of or related to the Club.

No waiver by FK of any term or condition set out in these Terms and Conditions shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of FK to assert a right or provision under these Terms and Conditions shall not constitute a waiver of such right or provision.

If any provision of these Terms and Conditions is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of these Terms and Conditions will continue in full force and effect.

In the event of any action arising out of or related to these Terms and Conditions or the Club, we shall be entitled to reasonable attorneys' fees, costs, and expenses incurred in such action.

These Terms and Conditions constitute the sole and entire agreement between Member and FK regarding the Club and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the Club.

For assistance with any aspect of a purchase, ownership, or use of a Card or Club membership, please contact us at 317-560-4848.

Information that a Member provides when purchasing Club membership is subject to our <https://www.eatpier48.com/private-policy>. FK's website terms and conditions can be found <https://www.eatpier48.com/private-policy>.