

## **Gift Card Terms and Conditions**

**Updated February 28, 2022**

The following Gift Card Terms and Conditions (referred to as this “Agreement”) describe the terms and conditions that apply to the purchase, acceptance and use of Shorty’s Gift Cards (the “Cards”). This Agreement is between you (the “Cardholder”), and Shorty’s.

(“Card Company”) and Shorty’s Restaurants and its parents, affiliates and subsidiaries (collectively, “Brinker”), or in some cases, the respective Shorty’s franchisee partner (each a “Franchisee”) or participating restaurant that issued and sold your Card. Shorty’s provides Cards to its system of restaurants.

By purchasing, accepting, or using a Card, you agree to be bound by this Agreement. If you do not agree with this Agreement, do not purchase, use, or accept the Card. IMPORTANT: This Agreement includes in Section 10 a class action waiver and resolution of disputes by arbitration instead of in court.

1. About Your Card. The Cards are closed-loop gift cards. The Cards are not debit or credit cards. Cards may be purchased at a Shorty’s location that is owned and operated by Shorty’s at a participating restaurant or third party distributor approved by Shorty’s, or online at the following sites:

<https://shortysmex.com/gift-cards>. The Cards are issued by Card Company, and Card Company is the sole legal obligor to the Cardholder with respect to such Cards; provided, however, Shorty’s, the Franchisees, and any other participating restaurants have agreed by contract with Card Company to accept the Cards in payment for food or beverages at participating restaurants. Such obligation is owed exclusively to Card Company. Card Company may assign its obligations with respect to any Cards at any time, in which case the assignee shall become the issuer and sole legal obligor to the Cardholder, and Card Company shall be released from all further obligation to the Cardholder with respect to these Cards.

Any Cards assigned by Card Company to an assignee shall remain subject to this Agreement. Other than Card Company, Shorty’s bears no responsibility or liability for any Cards, and you hereby knowingly release Shorty’s (other than Card Company) from any and all liability or

claims of any nature whatsoever arising in connection with the Cards. Cards issued by Card Company may also be sold by third-party distributors. Card Company and Shorty's shall not be liable to you with respect to Cards sold by third-party distributors. You hereby knowingly release Card Company and Brinker from all liability related to Franchisee-issued Cards, and you hereby knowingly release the Franchisees from all liability related to Card Company issued Cards. Regardless of whether your Card was issued by Card Company or a Franchisee, this Agreement applies to the Card. Any information shared as a result of online purchases of Cards will be subject to Shorty's Privacy Policy.

2. Redemption. Your Card is redeemable only for purchases of food or beverages at any Participating Shorty's. Please note the restaurant brands that may redeem your Card are limited to those brands listed on the back of your Card. Additionally, some restaurants within those brands may not be eligible to accept Cards. Cards have no cash value and may not be redeemed for cash (except as required by law). Cards have no value until activated. Card activation may be delayed by four hours. Cards are not redeemable to purchase another Card or toward a previous purchase.

3. Balance Inquiry. For balance inquiries, visit [www.shortysmex.com](http://www.shortysmex.com). The balance you receive when inquiring is an estimate only. In most cases, the balance is adjusted immediately when you make a purchase, but there may be occasions when the balance adjustment is delayed.

4. No Expiration; No Fees. The Cards do not expire. No fees for inactivity or service fees apply to any Cards. Card Company, Shorty's the Franchisees, and any other participating restaurants reserve the right to refuse to honor any Card in the event of a disputed credit card charge, bounced check or other failure of consideration, or if there is a reasonable belief that the Card has been acquired fraudulently or in violation of this Agreement.

5. Not Reloadable. Cards may not be reloaded with additional value.

6. No Refunds. No refunds are permitted with respect to the Cards. All sales of Cards are final.

7. Lost, Damaged, or Stolen Cards; Unauthorized Use. Lost, damaged or stolen Cards may be replaced for no fee provided that you have your original activation receipt and your original

Card has not been redeemed. Please contact Shorty's at 1-603-488-2466 to request Card replacement for the value remaining on the lost or stolen Card. Card Company, Shorty's, the Franchisees, and any participating restaurants are not responsible for unauthorized Card use.

8. Resale Prohibited. Other than purchasers that are Bulk Purchasers (defined in Paragraph 16, below), you may not sell a Card or otherwise barter for its exchange. However, you may transfer a Card to another person for no monetary consideration (e.g., as a gift). Card is valid only if obtained from Shorty's, Card Company, a Franchisee or participating restaurant, or an authorized third-party distributor. Shorty's, Card Company, the Franchisees, and any participating restaurants will not be liable for honoring Cards if obtained from unauthorized sellers or resellers, including through Internet auction sites.

9. Maximum Value. You may not associate more than \$2,000 with a Card on any day, either through purchase or reloading (or a combination of both). In addition, you may not purchase or obtain multiple Cards with a value of more than \$10,000 in any one day.

10. MANDATORY BINDING INDIVIDUAL ARBITRATION. Please read this section carefully. It affects legal rights that you may otherwise have and requires individual final and binding arbitration of most disputes instead of resolution in court.

Arbitration is the submission of a dispute to a neutral arbitrator, NOT a judge or jury, for a final and binding decision, known as an "award." Arbitration provides for more limited discovery than in court, is subject to limited review by courts, and the result is confidential. Each party has an opportunity to present evidence to the arbitrator in writing or through witnesses. An arbitrator generally can award the same damages and relief that a court can award under the law and must honor the terms and conditions in this Agreement.

#### A. ARBITRATION AGREEMENT AND CLASS ACTION WAIVER

You, Card Company and Brinker (or the Franchisee or participating restaurant, as applicable) agree that any dispute, controversy or claim arising out of or relating to this Agreement or your purchase, acceptance or use of any Card, including the determination of the scope or applicability of this Agreement to arbitrate, regardless of the date of accrual of such dispute, shall be resolved in its entirety by individual (NOT CLASSWIDE OR

COLLECTIVE) binding arbitration, except that you, Card Company or Brinker (or the Franchisee or participating restaurant) may take claims to small claims court if they qualify for hearing by such a court. You also agree that this Section 10 shall apply to any dispute with other parties arising out of or relating to this Agreement or the purchase or use of any Card, including the determination of the scope or applicability of this Section 10, regardless of the date of accrual of such dispute, except that you or any such third parties may take claims to small court if they qualify for hearing by such a court.

YOU, CARD COMPANY AND BRINKER (OR THE FRANCHISEE OR PARTICIPATING RESTAURANT) AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING AND THAT ANY ARBITRATION UNDER THIS AGREEMENT WILL TAKE PLACE ON AN INDIVIDUAL BASIS AND THAT CLASS, MASS, CONSOLIDATED OR COMBINED ACTIONS OR ARBITRATIONS OR PROCEEDINGS AS A PRIVATE ATTORNEY GENERAL ARE NOT PERMITTED.

You, Card Company and Brinker (or the Franchisee or participating restaurant) agree to waive the right to trial by jury.

This Section 10 extends to claims that you assert against other parties arising out of or relating to this Agreement or the purchase, acceptance or use of the Card.

The Agreement evidences a transaction in interstate commerce and the Federal Arbitration Act governs the interpretation and enforcement of this Section 10.

This Section 10 shall survive termination of this Agreement. Notwithstanding anything to the contrary, if any part of this Section 10 is deemed invalid or inapplicable, the remainder of this Agreement, including Section 10, shall still be considered valid and enforceable. If any part of this Section 10 is deemed invalid or inapplicable, you, Card Company and Brinker (or the Franchisee or participating restaurant) waive, to the fullest extent allowed by law, any claims to recover punitive or exemplary damages and any right to pursue any claims on a class, mass, consolidated, or combined basis.

11. Limitation of Liability. CARD COMPANY, SHORTY'S, AND EACH FRANCHISEE (OR PARTICIPATING RESTAURANT) MAKE NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT

TO THE CARDS INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN THE EVENT THAT A CARD IS NON-FUNCTIONAL, YOUR SOLE REMEDY, AND CARD COMPANY'S, SHORTY'S, THE FRANCHISEE'S (OR PARTICIPATING RESTAURANT'S) SOLE LIABILITY SHALL BE THE REPLACEMENT OF SUCH CARD. CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU.

12. Unclaimed Property. In the event you do not use your Card for a certain period of time, Card Company, participating restaurants, or a Franchisee may be required to turn over the remaining Card balance to a state under such state's unclaimed or abandoned property law. Although your Card does not expire, if the remaining balance of your Card is turned over under a state's unclaimed property law, by operation of law, Card Company or the applicable Franchisee or participating restaurant may be released from any further liability or obligation with respect to your Card and you may be required to contact the state's unclaimed property administrator to attempt to recover your unused Card balance. To protect your right to continue to use your remaining Card balance at Shorty's, Card Company or the applicable Franchisee or participating restaurant will make reasonable efforts to exempt your Card from state unclaimed property laws. Use your Card balance promptly and completely to avoid any risk of your unredeemed balance being turned over to a state as unclaimed property.

14. Changes to Agreement. Card Company, Shorty's, the Franchisees, and any participating restaurants reserve the right to change this Agreement from time to time in their discretion without special notice to you. Notice of changes will be by reasonable means, which may be by posting of the revised version of this Agreement on this website ("Updated Terms"). Your use of a Card after Card Company or Shorty's has posted the Updated Terms constitutes your agreement to the Updated Terms. The Updated Terms will be effective as of the time of posting, or such later date as may be specified in the Updated Terms and will apply to your use of a Card from that point forward. The date of the last update to this Agreement is always

indicated near the top of the page and any change in the date of this Agreement shall constitute notice to you that the Agreement has changed.

15. Fraud/Violation of Terms. Card Company, Shorty's, the Franchisees, and any participating restaurants reserve the right to refuse to honor, or to suspend or deactivate a Card where Card Company, Shorty's a Franchisee, or a participating restaurant suspects that the Card was obtained fraudulently, in violation of this Agreement, or in violation of applicable laws or other applicable terms and conditions.