

## BIRD MANAGEMENT OPCO, LLC PRODUCT TERMS OF SALE

***Last Updated: 05/15/2024***

These Product Terms of Service ("**Product Terms**") apply to your purchase of products (including any accessories) (collectively, "**Products**") from Bird Management Opco, LLC ("**Company**", "**we**", "**our**" or "**us**") via the Site(s). Capitalized terms used but not otherwise defined herein will have the meanings ascribed to such terms in the general Terms of Service, which are available [here](#) and are hereby incorporated by this reference. If there is a conflict between these Product Terms and the general Terms, these Product Terms will control for that conflict only with regard to Products related matters. The general Terms will control for all other conflicts. **Further, any matters relating to Software (for the avoidance of doubt, including firmware present in the Product, which are licensed and not sold to you) are subject to the Software obligations and restrictions set forth in the general Terms.**

**By purchasing our Products from the Site(s), you agree to these Product Terms and any other terms as referenced herein, including the limited warranty set forth in Section 5, and the mandatory arbitration provision and class action waiver in Section 12. BY AGREEING TO THESE PRODUCT TERMS, EXCEPT FOR (I) CERTAIN TYPES OF DISPUTES DESCRIBED IN SECTION 12, (II) WHERE YOU EXERCISE YOUR RIGHT TO OPT OUT OF ARBITRATION AS DESCRIBED IN SECTION 12, OR (III) TO THE EXTENT PROHIBITED BY LAW, DISPUTES BETWEEN YOU AND COMPANY WILL BE RESOLVED SOLELY ON AN INDIVIDUAL BASIS AND NOT AS A CLASS ARBITRATION, CLASS ACTION, ANY OTHER KIND OF REPRESENTATIVE PROCEEDING, OR BY JURY TRIAL. If you do not agree to these Product Terms, do not purchase our Products from the Site(s).**

### **1. Eligibility**

- (a) The Site(s) sells and ships Products to individuals that are at least 18 years of age (or the age of legal majority where the user lives).
- (b) You may only purchase Products for personal use by either yourself or your intended recipient of the Products. The Products are not authorized for resale. We may place a limit on the quantities that may be purchased per order, per account, per payment card, per person, or per household. We reserve the right, without prior notice, to refuse service to any end user or reject any order at any time and refund any money you have paid for such order.
- (c) Company reserves the right to refuse or cancel your order if Company suspects you are purchasing products for resale or don't otherwise meet the requirements set forth in these Product Terms.
- (d) You acknowledge that you are authorized to place an order and to perform any other legal acts required of you under these Product Terms.
- (e) To complete your purchase, you must have a valid billing and shipping address within a country that can be selected as part of the checkout process on the Site(s) (the "**Territory**").

### **2. Ordering**

- (a) You may place an order to purchase a Product advertised for sale on the Site(s) by following the onscreen prompts after clicking on the Product you are interested in. You will have an opportunity to check and correct any input errors in your order up until the point at which you submit your order.
- (b) All orders placed by you are subject to acceptance by us. We may choose not to accept your order for any reason and will not be liable to you or to anyone else in those circumstances.
- (c) After submitting an order to us, you will be sent an order acknowledgement email. Please note, this email is an acknowledgement and is not an acceptance of your order.
- (d) Acceptance of your order and the formation of a contract between us will take place when we send you an email confirming that the products you have ordered are being shipped to you, unless we have notified you that we do not accept your order or you have already cancelled it.

### **3. Prices & Payment.**

- (a) The prices of the Products advertised for sale on the Site(s) are as set out on the Site(s). All prices are shown in U.S. dollars, unless otherwise stated. All prices exclude taxes and delivery charges. Delivery charges, where applicable, are set out in the Delivery section below.
- (b) Unless stated otherwise, prices shown on the Site(s) exclude taxes or charges (“**Taxes**”) that may apply to your purchase. Prices shown on the Site(s) also exclude delivery costs. You will have an opportunity to review taxes and delivery costs before you confirm your purchase. Taxes and delivery costs (as applicable) will be added to the amount of your purchase and shown on the check-out page. We do not collect taxes on merchandise shipped to a jurisdiction in which we do not have substantial nexus, in which case you will be liable to the appropriate taxing authority for any sales taxes relating to your purchase from the Site(s). You are solely responsible for paying such Taxes and costs.
- (c) Prices may change at any time prior to (but not after) acceptance of your order.
- (d) We cannot accept your order until you have paid for it in full. Payment can be made by most major credit or debit cards by completing the relevant details on the checkout page.
- (e) In the unlikely event that the price of a Product has been incorrectly advertised on the Site(s) due to an error, we may cancel the order. We will not be obliged to supply products at an incorrect price, even if we have already confirmed your order.
- (f) By using a credit/debit card to pay for your order, you warrant and confirm that the card being used is yours or, if not yours, you are authorized to use such card. All credit/debit card transactions are subject to validation checks and authorization by the card issuer. If the issuer of your card refuses to authorize payment, we will not accept your order, we will not be obliged to inform you of the reason for the refusal, and we will not be liable for non-delivery. We are not responsible for your card issuer or bank charging you as a result of our processing of your credit/debit card payment in accordance with your order.

- (g) If you are paying with a payment card that is not issued in the United States, the purchase price may fluctuate with exchange rates and your payment card issuer may also charge you foreign conversion charges and fees. By providing Company with a payment method, you: (i) represent that you are authorized to use the payment method that you provided and that any payment information you provide is true and accurate; and (ii) authorize Company to charge you for any Products purchased using your payment method.
- (h) We recommend that you do not communicate your payment card details to anyone, including us, by email or chat. We cannot be responsible for any losses you may incur in transmitting information to us by internet link, or email or chat. Any such loss will be entirely your responsibility.
- (i) Discounts, coupons, promotions or rebates may not be combined with any other discounts, coupons, promotions or rebates. Promotion codes or discounts offered by us may not be sold or otherwise transferred to a third party.

#### **4. Delivery.**

- (a) Any delivery date stated on the Site(s) or in any document or email is approximate only and does not constitute any guarantee of delivery on any particular date. We are not liable for any delays in shipments.
- (b) Title and risk of loss passes to you upon delivery of the products by us to the applicable common carrier, unless as otherwise agreed upon in writing by us. You are responsible for filing any claims with carriers for damaged and/or lost shipments.
- (c) Upon delivery, you must inspect and accept or reject products immediately. In the event the Products are defective or do not comply with your order, you must promptly notify us and give us a reasonable opportunity to correct any issues.
- (d) Delivery charges will be added to the total amount due once you have selected a delivery service from the available options.
- (e) We will deliver to the address specified in your order. You cannot change your shipment address after your order is placed.

#### **5. Warranties; Refunds and Exchanges.**

- (a) Products purchased by you are subject to the applicable limited warranty terms and exclusions in effect at the time of shipment, as displayed on our Site(s) [Warranty Page](#)
- (b) THE WARRANTIES AND REMEDIES CONTAINED HEREIN AND IN THE LIMITED WARRANTY REFERENCED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED OR STATUTORY, INCLUDING ANY LIABILITY ARISING UNDER ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, BOTH OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.
- (c) You may, within thirty (30) days after the purchase of a Product, request an exchange for another

product of the same value, or a higher value by paying the difference in price. In the event that you opt for a lower value Product, the Company will not refund the difference between the higher initial price and the purchase price of the new Product. To qualify for an exchange, your item must be unused and in the same state as you received it. To obtain Product support and warranty service or further information on our Shipping, Refunds & Returns Policy, please visit [Product Support](#) page You may also contact us at:

Address: Bird Management Opco, LLC

1668 Jordan West Rd

Decorah, Iowa 52101

Telephone Number: (218) 282-7121

E-Mail Address: [support@feathersnapcam.com](mailto:support@feathersnapcam.com)

***Note: Products returned to the above address without a valid RMA may be rejected. You must contact Customer Support before returning any product.***

## **6. Product Information**

- (a) We have taken reasonable steps to display as accurately as possible the colors and other detailing of our Products in the images that appear on the Site(s). Since the actual colors and detailing you see onscreen will depend on your monitor, we cannot guarantee that your monitor's display of any color or other detailing will exactly reflect the color or detailing of the product you receive.
- (b) Any information on a Site(s) regarding sizing of products is included as a guide only. If you are uncertain about the size of any product, we recommend that you visit [Product Support](#)

## **7. Geographic Availability.**

Available Products may vary depending on your location. The Products can only be used in countries where it is legal to do so. We make no promise that Products available on the Site(s) are available for use or work in locations outside the Territory. To complete your purchase, you may be required to have a valid billing and shipping address within the Territory.

## **8. Product Availability & Limitations; Reservation of Rights.**

We reserve the right to reduce Product quantities at any time, even after you place an order. There may be times when we confirm your order but subsequently learn that we are unable to supply the ordered Product; if we cannot supply a Product you ordered, we will cancel the order and refund your purchase price in full. We further reserve the right to impose conditions on the honoring of any coupon, discount, or similar promotion; to bar any user from making any transaction; to alter the payment option for Products; and to refuse to provide any user with any Product.

## **9. Our Liability**

- (a) OUR TOTAL LIABILITY ON ANY CLAIM FOR LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ORDER PLACED BY YOU, OR FROM OUR THE PERFORMANCE OR BREACH OF THESE TERMS AND CONDITIONS, OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR OR USE OF ANY PRODUCT SOLD TO YOU WILL NOT IN ANY CASE EXCEED THE PRICE ALLOCABLE TO THE PRODUCT THAT GIVES RISE TO THE CLAIM. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING CLAIMS FOR LOST PROFITS OR SALES.
- (b) Nothing in this section or elsewhere in our Product Terms affects your statutory legal rights. In some jurisdictions, this limitation of liability may not apply to intentional or reckless acts or gross negligence on our part.

## 10. Indemnity

You agree to defend, indemnify, and hold harmless us and our affiliates, as well as the officers, directors, employees and agents of each, from and against any claims, actions or demands, including without limitation reasonable legal and accounting fees, alleging or resulting from your violation of any applicable law or breach of these Product Terms. This indemnification provision does not apply to intentional or reckless acts or gross negligence on our part.

## 11. Export Control

The United States and certain other countries control the export of products and information. You agree to comply with such restrictions and not to export or re-export the products to countries or persons prohibited under export control laws. By purchasing any product on the Site(s), you are agreeing that you are not in a country where such export is prohibited and that you are not on the U.S. Commerce Department's Table of Denial Orders or the U.S. Treasury Department's list of Specially Designated Nationals. You are responsible for compliance with the laws of your local jurisdiction regarding the import, export, or re-export of the products.

## 12. Dispute Resolution; Binding Arbitration.

- (a) Please read the following Section carefully because it requires you to arbitrate certain disputes and claims with Company and limits the way you can seek relief from us, unless you opt out of arbitration by following the instructions set forth below. No class or representative actions or arbitrations are allowed under this arbitration provision. In addition, arbitration precludes you from suing in court or having a jury trial.
- (b) **No Representative Actions. You and Company agree that any dispute arising out of or related to these Product Terms is personal to you and Company and that any dispute will be resolved solely through individual action, and will not be brought as a class arbitration, class action or any other type of representative proceeding.**
- (c) **Arbitration of Disputes.** Except for disputes in which you or Company seeks injunctive or other equitable relief for the alleged infringement, violation or misappropriation of intellectual property, **you and Company waive your rights to a jury trial and to have any dispute arising out of or related to these Product Terms or our Products**, including claims related to privacy

and data security, (collectively, “**Disputes**”) resolved in court. Instead, for any Dispute that you have against Company you agree to first contact Company and attempt to resolve the claim informally by sending a written notice of your claim (“**Notice**”) to Company by email at [support@feathersnapcam.com](mailto:support@feathersnapcam.com) or by certified mail addressed to Bird Management Opco LLC, 1668 Jordan West Rd, Decorah, Iowa 52101. The Notice must (i) include your name, residence address, email address, and telephone number; (ii) describe the nature and basis of the Dispute; and (iii) set forth the specific relief sought. Our notice to you will be similar in form to that described above. If you and Company cannot reach an agreement to resolve the Dispute within thirty (30) days after such Notice is received, then either party may submit the Dispute to binding arbitration administered by AAA or, under the limited circumstances set forth above, in court. All Disputes submitted to AAA will be resolved through confidential, binding arbitration before one arbitrator. Arbitration proceedings will be held in the State of Minnesota unless you are a consumer, in which case you may elect to hold the arbitration in your county of residence. For purposes of this Section 12, a “consumer” means a person using the Services for personal, family or household purposes. You and Company agree that Disputes will be held in accordance with the rules of the American Arbitration Association (“**AAA Rules**”). The most recent version of the AAA Rules are available on the [American Arbitration Association website](#) and are hereby incorporated by reference. You either acknowledge and agree that you have read and understand the AAA Rules or waive your opportunity to read the AAA Rules and waive any claim that the AAA Rules are unfair or should not apply for any reason.

- (d) You and Company agree that these Product Terms affect interstate commerce and that the enforceability of this Section 12 will be substantively and procedurally governed by the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* (the “**FAA**”), to the maximum extent permitted by applicable law. As limited by the FAA, these Product Terms and the AAA Rules, the arbitrator will have exclusive authority to make all procedural and substantive decisions regarding any Dispute and to grant any remedy that would otherwise be available in court, including the power to determine the question of arbitrability. The arbitrator may conduct only an individual arbitration and may not consolidate more than one individual’s claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual.
- (e) The arbitration will allow for the discovery or exchange of non-privileged information relevant to the Dispute. The arbitrator, Company, and you will maintain the confidentiality of any arbitration proceedings, judgments and awards, including information gathered, prepared and presented for purposes of the arbitration or related to the Dispute(s) therein. The arbitrator will have the authority to make appropriate rulings to safeguard confidentiality, unless the law provides to the contrary. The duty of confidentiality does not apply to the extent that disclosure is necessary to prepare for or conduct the arbitration hearing on the merits, in connection with a court application for a preliminary remedy or in connection with a judicial challenge to an arbitration award or its enforcement, or to the extent that disclosure is otherwise required by law or judicial decision.
- (a) You and Company agree that for any arbitration you initiate, you will pay the filing fee (up to a maximum of \$250 if you are a consumer), and Company will pay the remaining AAA fees and costs. For any arbitration initiated by Company, Company will pay all AAA fees and costs. You and Company agree that the state or federal courts of Minnesota have exclusive jurisdiction over any appeals and the enforcement of an arbitration award.
- (b) Any Dispute must be filed within one (1) year after the relevant claim arose; otherwise, the**

**Dispute is permanently barred, which means that you and Company will not have the right to assert the claim.**

- (c) **You have the right to opt out of binding arbitration within thirty (30) days of the date you first accepted the terms of this Section 12 by sending an email to [support@feathersnapcam.com](mailto:support@feathersnapcam.com).** In order to be effective, the opt-out notice must include your full name and address and clearly indicate your intent to opt out of binding arbitration. By opting out of binding arbitration, you are agreeing to resolve Disputes in accordance with Section 12.
- (d) If any portion of this Section 12 is found to be unenforceable or unlawful for any reason, (a) the unenforceable or unlawful provision will be severed from these Product Terms; (b) severance of the unenforceable or unlawful provision will have no impact whatsoever on the remainder of this Section 12 or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to this Section 12; and (c) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims will be stayed pending the outcome of any individual claims in arbitration. Further, if any part of this Section 12 is found to prohibit an individual claim seeking public injunctive relief, that provision will have no effect to the extent such relief is allowed to be sought out of arbitration, and the remainder of this Section 12 will be enforceable.

13. **Governing Law and Venue.** Any dispute arising from these Product Terms and your use of the Site(s) to purchase the Products will be governed by and construed and enforced in accordance with the laws of Minnesota, except to the extent preempted by U.S. federal law, without regard to conflict of law rules or principles (whether of Minnesota or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. The 1980 United Nations Convention on Contracts for the International Sale of Goods does not apply. Any dispute between the parties that is not subject to arbitration or cannot be heard in small claims court will be resolved in the state or federal courts of Minnesota and the United States. You and Company waive any objection to venue in any such courts. If your local law requires that consumer contracts be interpreted subject to local law and enforced in the courts of that jurisdiction, this Section 13 may not apply to you only to the extent that local law conflicts with this Section 13.

14. **Survival.** Notwithstanding anything to the contrary herein, Sections 3, 5, 9, 10, 12, 13, 15 and 16 will survive deactivation, termination, expiration and cancellation of your account, subscription, agreement and/or relationship with us.

15. **Severability.** Each provision contained in these Product Terms constitutes a separate and distinct provision severable from all other provisions. If any provision (or any part thereof) is unenforceable under or prohibited by any present or future law, then such provision (or part thereof) will be amended, and is hereby amended, so as to be in compliance with such law, while preserving to the maximum extent possible the intent of the original provision. Any provision (or part thereof) that cannot be so amended will be severed from these Product Terms; and, all the remaining provisions of these Product Terms will remain unimpaired.

16. **Miscellaneous.** The failure of Company to exercise or enforce any right or provision of these Product Terms will not operate as a waiver of such right or provision. These Product Terms reflect the entire agreement between the parties relating to the subject matter hereof and supersede all prior

agreements, representations, statements and understandings of the parties. The section titles in these Product Terms are for convenience only and have no legal or contractual effect. Use of the word “including” will be interpreted to mean “including without limitation.” Except as otherwise provided herein, these Product Terms are intended solely for the benefit of the parties and are not intended to confer third-party beneficiary rights upon any other person or entity. You agree that communications and transactions between us may be conducted electronically.