

**BIRD ELECTRONIC CORPORATION**  
**TERMS AND CONDITIONS OF SALE**

Bird Electronic Corporation, an Ohio corporation, and its affiliates (collectively referred to herein as “Seller”) agrees to sell specific goods, products, components, equipment, and/or services (collectively referred to herein as the “Products”) to Seller’s customer (“Buyer”) pursuant to and subject to the following Terms and Conditions of Sale (the “Sale Terms”).

**1. ACCEPTANCE; CONTRACT FORMATION.** These Sale Terms shall apply to the sale of all Products by Seller to Buyer. By placing an order with Seller, Buyer expressly agrees to be bound by these Sale Terms to the exclusion of all other prior understandings, terms, conditions, warranties, communications, or representations by Seller, with the exception of any specific terms set forth in any Seller’s quotation, proposal, acknowledgment, or Invoice (collectively “Seller Document(s)”). To the extent that any of the terms herein conflict with any Seller Document, the more specific terms of the Seller Document shall control. These Sale Terms and the specific terms of any Seller Document constitute the entire agreement between Buyer and Seller. Any additional, different, or conflicting terms or conditions contained or incorporated into Buyer’s request for quotation, purchase order, release, acknowledgement, or other document are hereby rejected and shall not be binding on Seller. All Buyer purchase orders and/or releases received by Seller are subject to written acknowledgement by Seller on Seller’s acknowledgment form. Seller reserves the right to make changes to these Sale Terms at any time by posting changes to <https://birdrf.com/bird-terms-conditions>, and such changes shall apply to all sales after such date.

**2. PRICES; TAXES AND DUTIES.** All Product prices quoted as ‘firm’ shall be good only for the period stated in Seller’s quotation or, in absence of any stated time period, 30 days. All other published or quoted prices may be changed at any time without notice. Except as specified in any Seller Document, all Product prices are: (a) quoted as INCOTERMS EXW Seller’s facility in the U.S.A. and exclusive of transportation, installation, service, and insurance charges; (b) exclude all present or future sales, use, excise, value added, and other taxes other than income taxes payable by Seller as a result of Seller’s business operations (“Taxes”); and (c) exclude or all

duties, customs, import charges, and fees imposed with respect to the sale, shipment, delivery, or use of any Products (“Duties”). All Taxes and Duties are the sole and exclusive responsibility of Buyer and will be added to Seller’s Invoice. If any Taxes or Duties that are the responsibility of Buyer are paid by Seller or become due after shipment or pickup and were not paid in advance by Buyer, then Buyer shall reimburse Seller for such amount(s) within 10 business days after invoice from Seller. If Buyer claims a tax exemption, Buyer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.

**3. PAYMENT TERMS.** Payments shall be made in U.S. Dollars and made in advance of shipment or pickup except upon approval of Seller’s Credit Department. Except as stated in the Seller Documents, standard credit terms, if approved, are net 30 days from the date of Seller’s invoice. Interest shall accrue on any unpaid balance at a rate of 1.5% per month (18% APR) or the maximum amount permitted by law, whichever is less. Seller reserves the right to terminate any sale, withhold or suspend further delivery or performance, and/or require Buyer to make full or partial payments in advance or provide other security satisfactory to Seller if at any time Buyer fails to make payment in accordance with the applicable terms or Seller believes in good faith that Buyer’s financial condition does not justify the terms of payment specified. Buyer shall further be liable for all costs incurred by Seller in collecting any overdue balance, including, without limitation, reasonable attorneys’ and agency fees. Credit Card payments are subject to an additional surcharge as set by Seller.

**4. PAYMENT DISPUTE AND OTHER NOTICES.** ALL DISPUTES AS TO THE AMOUNT(S) OWED HEREUNDER AND ALL OTHER NOTICES REQUIRED FROM BUYER TO SELLER HEREUNDER SHALL BE

MADE, IN WRITING, TO: BIRD ELECTRONIC CORPORATION, 30303 AURORA ROAD, SOLON, OH 44139, ATTN: CFO. SELLER'S ACCEPTANCE OF ANY PARTIAL PAYMENT WILL NOT DISCHARGE BUYER FROM RESPONSIBILITY FOR ANY REMAINING BALANCE DUE.

**5. SHIPPING AND DELIVERY.** Except as otherwise specified in the Seller Documents, all Products designated for shipment will be shipped FOB Origin, and title and risk of loss transfers upon delivery to the carrier. All shipping and delivery dates provided by Seller are approximate and are not guaranteed. Seller shall not be liable to Buyer or any third-party for any loss, damage, charge, or expense of any kind, including, without limitation, any consequential or special damages, arising from any delay in shipping or delivery or failure of delivery. Seller reserves the additional right to terminate any shipment or order, or a portion thereof, or to reschedule shipment within a reasonable period of time, in the event of any shipping delay, including one caused by a Force Majeure Event, without any liability to Seller. Any portion of a delivery not subject to a timely Claim Notice made in accordance with Section 9 of these Sale Terms shall be considered accepted by Buyer and must be paid in full.

**6. FORCE MAJEURE.** Seller shall not be liable for any non-performance or delay in performance which is due to (i) war, fire, flood, acts of God, pandemics, acts of third-parties, acts of terrorism, acts of any governmental authority or any agency or commission thereof, accident, breakdown of equipment, or similar or dissimilar causes beyond Seller's control including, without limitation, those interfering with production, supply, or transportation of the orders or components, (ii) Seller's ability to obtain, on terms it deems reasonable, labor, parts, equipment, or transportation, or (iii) acts or omissions of third-parties including, without limitation, causes of action resulting from personal injury or property damage (each a "Force Majeure Event").

**7. CONDITIONS.** All orders are subject to Seller's ability to obtain necessary raw materials, current

manufacturing schedules, and government regulations, orders, directives, embargos, and restrictions that may be in effect from time to time. All Product dimensions and specifications published by Seller are subject to Seller's standard tolerances for variations. If the Products are not sold as finished goods, then Buyer acknowledges and agrees that it will use the Products solely for incorporation into a finished good and not for resale.

**8. DESIGN CHANGES.** Seller reserves the right, without prior notice to Buyer, to make changes, modifications, and revisions with regard to the design of Products and/or packaging. In the event that any such design changes, modifications and/or revisions result in an increase of the price of the Products, Seller shall provide Buyer with notice such increase, and Buyer shall have 10 business days from the receipt of such notice to object or cancel any affected order. Buyer's failure to timely object to or cancel any affected order shall constitute Buyer's acceptance of such price increase.

**9. NON-CONFORMITY; RETURN OF PRODUCTS.** Buyer shall be responsible for inspecting all Products immediately upon receipt. Claims for Products failing to conform to applicable Specifications, shortages, delays, failures in shipment or delivery, or for any other cause shall be deemed waived and released by Buyer unless made in writing to Seller within forty-eight (48) hours of Buyer's receipt of the Products to BirdSales@birdrf.com ("Claim Notice"). Buyer's failure to timely provide a Claim Notice shall constitute Buyer's unqualified acceptance of the Products. Buyer's Claim Notice must specifically identify the exact nature of the claim, including, the nature of the non-conformity, the Products and number of Products affected, and the remedy requested by Buyer (repair, replacement, or refund). Seller will, in its sole option and discretion, either repair or replace non-conforming Products upon their return to Seller or refund the purchase price of such Products. Seller shall be entitled to return any Product without first obtaining Seller's written permission after review of Buyer's Claim Notice. Notwithstanding anything to

the contrary set forth herein or in any Seller Documents, custom and built-to-order Products are not eligible for refund under any circumstances.

**10. CANCELTATION.** Orders and releases may not be canceled once placed and accepted by Seller via written acknowledgment, except upon Seller's written consent and upon terms satisfactory to Seller, including, without limitation, cancelation and restocking fees. Orders that have been shipped or picked up may not be canceled for any reason and are subject to the provisions of these Sale Terms governing returns.

**11. LIMITED WARRANTY.** Except as otherwise specified in the Seller Documents, Seller warrants that for a period of one (1) year from the date of Buyer's receipt, the Products: (a) will be free of defects in materials and workmanship; (b) will conform to the specifications contained in the Seller Documents; and (c) are conveyed to Buyer free from any valid security interest, lien, or other encumbrances unknown to Buyer. EXCEPT AS SPECIFICALLY STATED IN THIS SECTION 11, ALL SALES ARE MADE ON AN "AS-IS" BASIS AND SELLER MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES AS TO NON-INFRINGEMENT, MERCHANTABILITY, FITNESS OF THE PRODUCTS FOR ANY PARTICULAR USE OR PURPOSE OR THAT THE DESIGN OF THE PRODUCTS OR ANY SERVICES PROVIDED THEREWITH WILL MEET BUYER'S REQUIREMENTS, OR ANY WARRANTY BASED ON A COURSE OF CONDUCT OR TRADE USAGE IN CONNECTION WITH SELLER'S PERFORMANCE HEREUNDER. SELLER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, DIRECTLY OR INDIRECTLY, ARISING FROM BUYER'S USE OF THE PRODUCTS OR FOR CONSEQUENTIAL DAMAGES. SELLER'S WARRANTIES AS SET FORTH HEREIN APPLY TO AND EXTEND ONLY TO THE INITIAL SALE OF THE PRODUCTS TO BUYER AND SHALL NOT EXTEND TO ANY SUBSEQUENT SALE OF THE PRODUCTS OR TO ANY SALE TO A THIRD-PARTY.

**12. LIMITATION OF LIABILITY.** SELLER'S LIABILITY, AND BUYER'S SOLE AND EXCLUSIVE REMEDY, WITH

RESPECT TO ANY LOSS OR DAMAGE IN ANY WAY CONNECTED WITH, ARISING OUT OF, OR RESULTING FROM THESE SALE TERMS OR THE PRODUCTS, WHETHER ARISING UNDER THE THEORY OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, OR OTHER LEGAL THEORY), SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF THE PRODUCTS DETERMINED BY SELLER TO BE DEFECTIVE, OR AT SELLER'S OPTION AND DISCRETION, TO REFUND OF THE PURCHASE PRICE IN ACCORDANCE WITH SECTION 9 (NON-CONFORMITY; RETURN OF PRODUCTS) OF THESE SALE TERMS.

**13. WAIVER OF SPECIAL DAMAGES.** IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY SALE OF PRODUCTS TO BUYER, INCLUDING, WITHOUT LIMITATION, BREACH OF ANY OBLIGATION IMPOSED ON SELLER IN CONNECTION HEREWITH. CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, OR LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH TO ANY PERSON, OR LOSS OF OR DAMAGE TO PROPERTY). BUYER SHALL INDEMNIFY SELLER AGAINST ALL LIABILITY, COST, OR EXPENSE WHICH MAY BE SUSTAINED BY SELLER ON ACCOUNT OF ANY SUCH LOSS, DAMAGE, OR INJURY.

**14. CONFIDENTIALITY; PROHIBITED USES.** The Products may incorporate technology, proprietary information, and/or trade secrets of Seller. All specifications, illustrations, drawings, data, and other information provided by Seller to Buyer in connection with or related to the Products ("Information") are the exclusive property of Seller. Buyer shall maintain and protect the confidentiality of any such Information and Buyer shall not copy, reproduce, and/or disclose Information to any third-party without the prior written consent of an authorized officer of Seller. Absent written permission from Seller, Buyer shall not use any of Seller's trademarks, trade names, and/or logos (collectively "Seller's Marks") in combination with

any other trademark, word, symbol, letter, or design, or as part of Buyer's company name or in connection with any product other than the Products sold to Buyer hereunder. Buyer shall not adopt or use any trademark, trade name, design, logo, or symbol which, in Seller's reasonable opinion, is similar to or likely to be confused with any of Seller's Marks. Buyer will not knowingly do, or permit to be done, any action or thing which will in any way impair Seller's rights in and to Seller's Marks.

**15. PATENTS.** Seller makes no warranty that the Products, or methods or processes of using the Products, are free from claims that such Products methods, or processes infringe upon the patents, trademarks, copyrights, or other intellectual property rights of any third-party ("Infringement Claims"). Buyer, by its acceptance of the Products, acknowledges and agrees that Seller is not indemnifying Buyer from any Infringement Claims and any indemnification rights provided or implied under the Uniform Commercial Code or any other law or regulation are hereby waived. Seller has no obligation to defend Buyer or pay damages, settlements, attorneys' fees, or any other ancillary damages due to Infringement Claims. In addition to any other remedy afforded to Seller, Buyer shall indemnify, hold harmless, and release Seller from liability for any suits, claims, losses or other liability made against, or suffered by Buyer arising from Infringement Claims or claims of unfair trade or unfair competition resulting from, or occasioned by, Buyer's use of the Products.

**16. EXPORT RESTRICTIONS.** Buyer acknowledges and agrees that "technical data" as defined by the U.S. Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR) or locally applicable export control laws or regulations, may only be transferred to U.S. Persons (defined in Part 120 of the ITAR and various parts of the EAR) unless prior authorization is granted by the U.S. Department of Commerce or the U.S. Department of State. Buyer hereby covenants and agrees not to export or re-export, directly or indirectly, any

Product containing technical data, including any goods, process or services derived from such technical data, to any destination to which such export or re-export is restricted or prohibited by U.S. or locally applicable law or regulations, without first obtaining, at Buyer's own expense, all prior authorizations, licenses, clearances and permits from the U.S. Department of Commerce, the U.S. Department of State and/or other applicable government authorities to the extent required by those laws or regulations.

**17. GOVERNING LAW; SEVERABILITY.** Any disputes arising from or in connection with the buy-sell relationship between Seller and Buyer, including, without limitation, these Sale Terms, the Seller Documents, and/or the Products (each a "Dispute"), shall be construed in accordance with and governed by the laws of the State of Ohio, U.S.A., including all matters of construction, validity, and performance, without giving effect to the conflict of laws provisions of such State. Seller and Buyer acknowledge and agree that neither the United Nations Convention on Contracts of the International Sale of Goods nor any provision thereof shall govern any aspect of the buy-sell relationship between Seller and Buyer and/or any obligation hereunder. Any provision of these Sale Terms that is prohibited by applicable law shall be ineffective solely to the extent of such prohibition and without invalidating the remaining provisions hereof.

**18. DISPUTE RESOLUTION.** Any Dispute shall be resolved exclusively by binding arbitration conducted in accordance with the American Arbitration Association Commercial Arbitration Rules, except that the parties shall have the same discovery rights under the Ohio Rules of Civil Procedure as if such Dispute was filed as an original action in the Cuyahoga County Court of Common Pleas. Such arbitration shall be held in Cuyahoga County, Ohio and conducted before a single arbitrator. Any decision or award of the arbitrator shall be final and binding upon the parties and enforceable by any court of competent jurisdiction.

**19. WAIVER.** No waiver or any modification of these Sale Terms or any Seller Document shall be effective unless made in writing and signed by an authorized representative of Seller. Seller's failure to enforce, at any time, or for any period of time, any of the provision of these Sale Terms shall not constitute a waiver of these Sale Terms nor shall any single or partial waiver of any term or right provided hereunder preclude Seller's future enforcement or exercise of such term or right.

**20. SET OFF.** Seller shall be entitled to set off or deduct any amount owing, for any reason, at any time, from Seller (including Seller's affiliates and subsidiaries), to Buyer against any amount payable by Buyer to Seller.

**21. RESERVATION OF RIGHTS.** Seller expressly reserves all rights and remedies which are available to it at law or in equity, including, without limitation, the rights and remedies set forth in the Uniform Commercial Code as in effect in the State of Ohio from time to time.

**22. DELAYS IN SHIPMENT REQUESTED BY BUYER.** Any delay in shipment requested by Buyer after a firm shipment date has been confirmed by Seller may be rejected by Seller in its sole discretion and if accepted may be subject to price changes, additional charges, and/or penalty.

**23. CANCELED ORDER PENALTIES.** Notwithstanding anything to the contrary stated in these Sale Terms or any Seller Document, once a firm shipment date has been confirmed by Seller, orders may not be canceled without the following penalties: (i) Standard Products: cancelation penalty equal to 50% of the PO's total value; (ii) Custom Products: cancelation penalty equal to 100% of the PO's total value.

**24. ADDITIONAL TERMS AND CONDITIONS FOR PROTOTYPE PRODUCTS.** Seller's sale of any prototype products shall be governed by Seller's Additional Terms and Conditions for Prototype sales posted at <https://birdrf.com/bird-terms-conditions/prototype-products>.

**25. ENTIRE AGREEMENT AND MODIFICATION.**

Upon Seller's acceptance of Buyer's order, these Sale Terms and the terms in any Seller Document shall constitute the entire agreement between Buyer and Seller and no statement, correspondence, or other terms shall modify or affect the terms hereof or thereof. No change in or modification of these Sale Terms or the terms of any Seller Document will be valid unless approved by Seller in writing. These Sale Terms govern and control any buy-sell transaction between Seller and Buyer notwithstanding Seller's use of Buyer's purchase order number as an accommodation to Buyer.