

## 2BIRDS WEB SITE TERMS OF USE

### **Introduction; Your Agreement to these Terms of Use.**

Welcome to the 2Birds Wine Tasting (“2Birds”) web site, [www.2Birdswinetasting.com](http://www.2Birdswinetasting.com) (the “2Birds Site”). The following Terms of Use for the 2Birds Site is a legal contract between you, an individual user or a single entity (collectively or individually “Users” and you sometimes also referred to as “you”), and 2Birds regarding your use of the 2Birds Site.

BEFORE USING THE 2BIRDS SITE, PLEASE READ CAREFULLY THE FOLLOWING TERMS OF USE. BY ACCESSING, BROWSING, AND USING THE 2BIRDS SITE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING TERMS, INCLUDING ANY ADDITIONAL GUIDELINES, AND ANY FUTURE MODIFICATIONS (COLLECTIVELY, THE “TERMS”). IF AT ANY TIME YOU DO NOT AGREE TO THESE TERMS, PLEASE IMMEDIATELY TERMINATE YOUR USE OF THE 2BIRDS SITE. PLEASE NOTE THAT THIS AGREEMENT AND THE TERMS ALSO APPLY TO MOBILE APPLICATIONS.

Your access to and use of the 2Birds Site is conditioned on your acceptance and compliance with these Terms. For avoidance of doubt, these Terms apply to all visitors, users and others who access or use the 2Birds Site.

- 1. ELIGIBILITY.** You represent that you are 18 years of age or older and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations and warranties set forth in these Terms and to abide by and comply with these Terms.
- 2. TOUR BOOKINGS.** To book a tour or order specific 2Birds products and services as may be offered on this 2Birds Site (sometimes referred to as “Offer(s)” and ordering a product and/or service “Booking(s)”), please go to the Booking Form [<https://www.2birdswinetasting.com/booking>]. Please note that by making a Booking, you additionally agree to the 2Birds Booking Terms and Conditions [[https://abd3be3d-d61d-4800-a8ca-c6c002d935a0.filesusr.com/ugd/97ce94\\_153684e9c247436a9ba69d8a6235045e.pdf](https://abd3be3d-d61d-4800-a8ca-c6c002d935a0.filesusr.com/ugd/97ce94_153684e9c247436a9ba69d8a6235045e.pdf)], which include, without limitation, payment terms, 2Birds cancellation and refund policies, confirmation that you are legally able to authorize credit card payment methods and grant necessary rights authorizing the transfer of information to relevant payment processing providers enabling the placement of orders, and relevant customer responsibilities (including responsibility for personal health and medications, behavior on tours, and insurance recommendations).
- 3. PRIVACY POLICY.** Your privacy is important to 2Birds. 2Birds’s Privacy Policy is hereby incorporated into these Terms by reference: [[https://abd3be3d-d61d-4800-a8ca-c6c002d935a0.filesusr.com/ugd/97ce94\\_4d86e04a8f2e46edbf62508967c3f6fa.pdf](https://abd3be3d-d61d-4800-a8ca-c6c002d935a0.filesusr.com/ugd/97ce94_4d86e04a8f2e46edbf62508967c3f6fa.pdf)] Please read this notice carefully for details relating to the collection, use, and disclosure of your personal information.

#### **4. INDIVIDUAL FEATURES AND SERVICES; AVAILABILITY, ERRORS & INACCURACIES.**

(a) When using the 2Birds Site, you will be subject to any additional posted guidelines or rules applicable to specific services, and features which may be posted from time to time (the “Guidelines”). All such Guidelines are hereby incorporated by reference into the Terms.

(b) We are constantly updating Offers. We may experience errors, and the goods and services in our Offers may be inadvertently mispriced, described inaccurately, or unavailable, and we may experience delays in updating information regarding our Offers in our advertising on other websites. We cannot and do not guarantee the accuracy or completeness of Offers or any information, including prices, product images, specifications, availability, and services. We reserve the right to change or update information and to correct errors, inaccuracies, or omissions at any time without prior notice.

**5. Modification of the Terms.** 2Birds reserves the right, at our discretion, to change, modify, add, or remove portions of these Terms at any time without notice to you. Please check these Terms and any Guidelines periodically for changes. Your continued use of the 2Birds Site after the posting of changes constitutes your binding acceptance of such changes. For any material changes to these Terms, such amended terms will automatically be effective thirty (30) days after they are initially posted on the 2Birds Site.

#### **6. Ownership; Proprietary Rights; Your Promises.**

(a) **2Birds’s Rights**. The 2Birds Site is owned and operated by 2Birds. The content, visual interfaces, interactive features, information, graphics, design, compilation, computer code, products, software, services, and all other elements of the 2Birds Site (“2Birds Materials”) are protected by copyright, trade dress, patent, and trademark laws, international conventions, and all other relevant intellectual property and proprietary rights, and applicable laws. All 2Birds Materials contained on the 2Birds Site are the copyrighted property of 2Birds (or its subsidiaries or affiliated entities if applicable) and/or third-party licensors. All trademarks, service marks, and trade names contained in the 2Birds Materials or on the 2Birds Site are proprietary to 2Birds or its affiliates and/or third-party licensors. 2Birds accordingly owns or otherwise controls all 2Birds Materials, reserves all rights not expressly granted in these Terms; you shall not acquire any right, title or interest to the 2Birds Materials.

(b) **Your Promises**. You represent and warrant that all the information you provide to us (including your profile/billing information) will be truthful and accurate, that you have the right to share any information or content that you provide without violating any laws, or the intellectual property, privacy, publicity, or other rights of any third party. Further, you agree that we may access, store and use any information that you provide in accordance with the terms of the Privacy Policy.

#### **7. Prohibited Uses.**

(a) As a condition of your use of the 2Birds Site, you will not use the 2Birds Site for any purpose that is unlawful or prohibited by these Terms. Access to the 2Birds Materials and the 2Birds Site from territories where their access or use thereof is illegal is strictly prohibited. 2Birds Users are responsible for complying with all local rules, laws, and regulations including, without limitation, rules about

intellectual property rights, the Internet, technology, data, email, or privacy. Any use by you of any of the 2Birds Materials and 2Birds Site other than for private, non-commercial use is strictly prohibited. In accordance with the foregoing, you represent and warrant that (i) you are not located in a country that is subject to a United States government embargo, or that has been designated by the United States government as a “terrorist supporting” country or organization, and (ii) you are not listed on any United States government list of prohibited or restricted parties.

(b) You agree not to impersonate any person or entity, falsely claim an affiliation with any person or entity, or access the 2Birds Site accounts of others without permission, forge another person’s digital signature, misrepresent the source, identity, or content of information transmitted via the 2Birds Site, or perform any other similar fraudulent activity;

(c) You agree not to intentionally interfere with or damage, impair or disable the operation of the 2Birds Site or any user’s enjoyment of it, by any means, including uploading or otherwise disseminating viruses, worms, spyware, adware or other malicious code;

(d) You agree not to remove, circumvent, disable, damage or otherwise interfere with any security-related features of the 2Birds Site, features that prevent or restrict the use or copying of any content accessible through the 2Birds Site, or features that enforce limitations on the use of the 2Birds Site.

(e) You agree not to obtain or attempt to obtain any materials or information through any means not intentionally made available through the 2Birds Site. You agree neither to modify the 2Birds Site in any manner or form, nor to use modified versions of the 2Birds Site, including (without limitation) for the purpose of obtaining unauthorized access to the 2Birds Site.

(f) You agree not to make unsolicited offers, advertisements, proposals, or send junk mail or spam to other users of the 2Birds Site. This includes, but is not limited to, unsolicited advertising, promotional materials or other solicitation material, bulk mailing of commercial advertising, chain mail, informational announcements, charity requests, and petitions for signatures.

(g) You agree not to reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the 2Birds Site or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

(h) You agree not to modify, adapt, translate or create derivative works based upon the 2Birds Site or any part thereof;

(i) You agree not to delete the copyright notices or other intellectual property or other ownership rights or attributions on the 2Birds Site or on any third party postings/materials accessed via the 2Birds Site.

**8. Links and Third Party Content.** 2Birds may provide links on the 2Birds Site to other sites or content (“Reference Sites”). 2Birds has no control over such Reference Sites or content, and therefore makes no claim or representation regarding, and expressly disclaims responsibility for, the accuracy, quality, legality, nature, availability or reliability of Reference Sites or content linked to by the 2Birds Site. 2Birds provides links to you only as a convenience, and the inclusion of any link on the 2Birds Site does not imply our affiliation, endorsement, or adoption of the linked site or any information therein. ACCESS AND USE OF REFERENCE SITES,

INCLUDING THE INFORMATION, MATERIAL, PRODUCTS, AND SERVICES ON REFERENCE SITES OR AVAILABLE THROUGH REFERENCE SITES, IS SOLELY AT YOUR OWN RISK. When you leave the 2Birds Site, our terms and policies no longer govern. You should review applicable terms and policies, including the privacy and data gathering practices, of any Reference Sites.

**9. Availability of Service.** 2Birds may make changes to or discontinue any of the materials, products, or services available within the 2Birds Site at any time, and without notice. The materials, products, or services on the 2Birds Site may be out of date, and 2Birds makes no commitment to update these materials on the 2Birds Site.

#### **10. Terms of Use Violations; Termination.**

(a) **2Birds.** 2Birds may also in its sole discretion and at any time discontinue providing access to the 2Birds Site, or any part thereof, with or without notice. You agree that any termination of your access to the 2Birds Site or any account you may have or portion thereof may be effected without prior notice, and you agree that 2Birds shall not be liable to you or any third-party for any such termination.

#### **11. Disclaimers; No Warranties.**

(a) **No warranties.** TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, 2BIRDS, AND ITS AFFILIATES, PARTNERS, AND SUPPLIERS DISCLAIM ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM 2BIRDS OR THROUGH THE 2BIRDS SITE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. YOU EXPRESSLY ACKNOWLEDGE THAT AS USED THROUGHOUT SECTIONS 11-13, THE TERM 2BIRDS INCLUDES, IF AND AS APPLICABLE, 2BIRDS'S OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, INDIVIDUAL MEMBERS, PARTNERS, AGENTS, SUPPLIERS, LICENSORS, AFFILIATES AND SUBCONTRACTORS.

(b) **“As is” and “As available” and “With All Faults.”** YOU EXPRESSLY AGREE THAT THE USE OF THE 2BIRDS SITE IS AT YOUR SOLE RISK. THE 2BIRDS SITE AND ANY THIRD-PARTY MEDIA, CONTENT, SOFTWARE, SERVICES OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE 2BIRDS SITE ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE”, “WITH ALL FAULTS” BASIS AND WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND EITHER EXPRESS OR IMPLIED.

(c) **Platform Operation and Content.** 2BIRDS, ITS SUPPLIERS, LICENSORS, AFFILIATES, AND PARTNERS DO NOT WARRANT THAT THE 2BIRDS MATERIALS, 2BIRDS SITE, OR ANY OTHER INFORMATION OFFERED ON OR THROUGH THE 2BIRDS SITE OR ANY REFERENCE SITES WILL BE UNINTERRUPTED, OR FREE OF ERRORS, VIRUSES OR OTHER HARMFUL COMPONENTS AND DO NOT WARRANT THAT ANY OF THE FOREGOING WILL BE CORRECTED.

- (d) **Accuracy.** 2BIRDS, ITS SUPPLIERS, LICENSORS, AFFILIATES, AND PARTNERS DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE 2BIRDS SITE OR ANY REFERENCE SITES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.
- (e) **Harm to Your Computer.** YOU UNDERSTAND AND AGREE THAT YOU USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAIN INFORMATION, MATERIALS, OR DATA THROUGH THE 2BIRDS SITE OR ANY REFERENCE SITES AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM) OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF SUCH MATERIAL OR DATA.

## **12. Limitation of Liability and Damages.**

- (a) **Limitation of Liability.** UNDER NO CIRCUMSTANCES, AND UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, SHALL 2BIRDS OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD PARTY PARTNERS OR SUPPLIERS, BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, DATA OR USE OR COST OF COVER) ARISING OUT OF OR RELATING TO THESE TERMS OR THAT RESULT FROM YOUR USE OR THE INABILITY TO USE THE 2BIRDS MATERIALS ON THE 2BIRDS SITE OR ANY REFERENCE SITES, THE 2BIRDS SITE ITSELF, OR ANY OTHER INTERACTIONS WITH 2BIRDS, EVEN IF 2BIRDS OR A 2BIRDS AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, 2BIRDS'S LIABILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY LAW.
- (b) **Limitation of Damages.** IN NO EVENT SHALL 2BIRDS OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD PARTY PARTNERS, LICENSORS OR SUPPLIERS' TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR USE OF THE 2BIRDS SITE (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, OR OTHERWISE) EXCEED THE GREATER OF THE AMOUNT PAID BY YOU TO 2BIRDS DURING THE SIX MONTHS PRIOR TO SUCH CAUSE OF ACTION OR ONE HUNDRED EUROS.
- (c) **Reference Sites.** THESE LIMITATIONS SHALL ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY REASON OF ANY PRODUCTS OR SERVICES SOLD OR PROVIDED ON ANY REFERENCE SITES OR OTHERWISE BY THIRD PARTIES OTHER THAN 2BIRDS AND RECEIVED BY YOU THROUGH OR ADVERTISED ON THE 2BIRDS SITE OR RECEIVED BY YOU THROUGH ANY REFERENCE SITES.

## **13. Limitations by Applicable Law; Basis of the Bargain.**

- (a) **Limitations by Applicable Law.** CERTAIN JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF YOU RESIDE IN SUCH A JURISDICTION, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS. THE LIMITATIONS OR EXCLUSIONS OF WARRANTIES, REMEDIES OR LIABILITY CONTAINED IN THESE TERMS APPLY TO YOU TO THE FULLEST EXTENT SUCH LIMITATIONS OR EXCLUSIONS ARE PERMITTED UNDER THE LAWS OF THE JURISDICTION IN WHICH YOU ARE LOCATED.
- (b) **Basis of the Bargain.** YOU ACKNOWLEDGE AND AGREE THAT 2BIRDS HAS OFFERED ITS PRODUCTS AND SERVICES AND ENTERED INTO THESE TERMS IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND 2BIRDS, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND 2BIRDS. YOU ACKNOWLEDGE AND AGREE THAT 2BIRDS WOULD NOT BE ABLE TO PROVIDE THE 2BIRDS SITE TO YOU ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

#### **14. Dispute Resolution and Arbitration.**

(a) **Governing Law.** These Terms will be governed by and construed in accordance with the laws of Spain, without giving effect to any principles of conflicts of law.

(b) **Jurisdiction.** You agree that any action at law or in equity arising out of or relating to these Terms or 2Birds will be filed only in the courts located in Mallorca, Spain, and you hereby consent and submit to the personal and exclusive jurisdiction of such courts for the purposes of litigating any such action.

#### **15. Miscellaneous.**

(a) **Notice.** 2Birds may provide you with notices, including those regarding changes to these Terms, by email, regular mail or postings on the 2Birds Site. Notice will be deemed given twenty-four hours after email is sent, unless 2Birds is notified that the email address is invalid. Alternatively, we may give you legal notice by mail to a postal address, if provided by you through the 2Birds Site. In such case, notice will be deemed given three days after the date of mailing. Notice posted on the 2Birds Site is deemed given 30 days following the initial posting.

(b) **Report Violations; Questions.** You agree that you will report any violations of the Terms to 2Birds at the following: [info@2birdswinetasting.com]. Additionally, if you have any questions or comments about these Terms, please contact info@2birdswinetasting.com

(c) **Waiver.** A provision of these Terms may be waived only by a written instrument executed by the party entitled to the benefit of such provision. The failure of 2Birds to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision.

- (d) **Severability.** If any provision of these Terms shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions.
- (e) **Assignment.** The Terms and related Guidelines, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by 2Birds without restriction. Any assignment attempted to be made in violation of these Terms shall be void.
- (f) **Independent Contractor.** You agree that no joint venture, partnership, employment, or agency relationship exists between you and 2Birds as a result of these Terms or use of the 2Birds Site.
- (h) **Survival.** All terms that would customarily survive termination of such Terms, including without limitation Sections 6 and Sections 10-15, will survive any termination of these Terms.
- (i) **Headings.** The heading references herein are for convenience purposes only, do not constitute a part of these Terms, and shall not be deemed to limit or affect any of the provisions hereof.
- (j) **Entire Agreement.** These Terms comprise the entire agreement between you and 2Birds relating to the subject matter herein and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. This agreement shall not be modified except in a writing, signed by both parties, or by a change to these Terms or Guidelines made by 2Birds as set forth in accordance with the terms herein.
- (k) **Claims.** YOU AND 2BIRDS AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE 2BIRDS SITE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED

**Last Updated: April, 2021**