

# OUTDOOR VOICES TERMS OF USE

**Last Updated: August 29<sup>th</sup>, 2018**

Thanks for visiting Outdoor Voices! These Terms of Use (“**Terms**”) apply to your purchase of Outdoor Voices clothing and accessories (collectively, our “**Products**”) and to your access to and use of the website and other online products and services (collectively, our “**Services**”) provided by Outdoor Voices, Inc. (“**Outdoor Voices**,” “**we**” or “**us**”). **By accessing or using our Services, you agree to these Terms. If you do not agree to these Terms, including the mandatory arbitration provision and class action waiver in Section 14, do not access or use our Services.**

## 1 Privacy

Please refer to our [Privacy Policy](#) for information about how we collect, use and disclose information about you.

## 2 Eligibility

You must be at least 13 years of age to access or use our Services. If you are between 13 and 18 years of age (or the age of legal majority where you live), you may only access or use our Services under the supervision of a parent or legal guardian who agrees to be bound by these Terms. If you are accessing or using our Services on behalf of another person or entity, you represent that you are authorized to accept these Terms on that person or entity’s behalf and that the person or entity agrees to be responsible to us if you or the other person or entity violates these Terms.

## 3 User Accounts and Account Security

You may have the ability to create an online account. If you register for an account, you must provide accurate account information and promptly update this information if it changes. You also must maintain the security of your account credentials, not share your account credentials with others and promptly notify Outdoor Voices if you discover or suspect that someone has accessed your account without your permission.

## 4 Terms of Sale

The terms in this Section 4 apply if you purchase Products using the Services for delivery to locations in the United States. If you purchase Products for delivery to jurisdictions outside of the United States (“**International Order**”), you purchase the Products directly from our reseller, Flow Commerce, Inc. (“**Flow**”). In connection with any International Order, you agree (a) to be bound by Flow’s order terms (available here: <https://www.flow.io/policies/consumer-terms>), (b) that you entering into a separate agreement with Flow, and that we are not a party to that

agreement, (c) that Flow is solely responsible for fulfilling International Orders, and (d) to look solely to Flow for any claims or disputes regarding International Orders.

#### **4.1 Payment and Billing Information**

By providing a credit card or other payment method that we accept, you represent and warrant that you are authorized to use the designated payment method and you authorize us to charge your payment method for the total amount of your order (including any applicable taxes and other charges). If the payment method cannot be verified, is invalid or is otherwise not acceptable, your order may be suspended or cancelled. You must resolve any problem we encounter in order to proceed with your order.

#### **4.2 Pricing and Availability**

Prices do not include applicable taxes and other charges, unless we clearly state in writing that a price includes applicable taxes. All Products offered for sale are subject to availability and we reserve the right to impose quantity limits on any order, reject all or any part of an order and discontinue our Products without prior notice, even if you have already placed your order. Prices for Products are subject to change at any time, but changes will not affect any order for Products you have already placed.

In the event that a Product you are interested in purchasing is not listed or is listed as "out of stock" on the Product's information page, it is not currently available for ordering. Please check back at a later time as our Product inventory is subject to change.

#### **4.3 Taxes**

You are responsible for any sales, duty or other governmental taxes or fees due with respect to your purchase of Products. We will collect applicable sales tax if we determine that we have a duty to collect sales tax. We will present any taxes that we are required to collect at checkout, but note that actual taxes charged may be adjusted from the amount shown at checkout. Several factors may cause this, such as variances between processor programs and changes in tax rates.

#### **4.4 Shipping; Risk of Loss**

You agree to pay any shipping and handling charges shown at the time you make a purchase in accordance with our shipping policies available [here](#). We reserve the right to increase, decrease, add or eliminate shipping and handling charges from time to time, but we will provide notice of the charges applicable to you before you make your purchase. Any delivery dates or times shown as part of the checkout process are estimates only and are not guaranteed. Unless we state otherwise, risk of loss or damage passes to you upon delivery of the Products to your specified delivery location.

#### 4.5 Returns and Cancelling or Changing an Order

You may return or exchange any unused Outdoor Voices Products in accordance with our returns and exchange policy available [here](#).

#### 4.6 Errors

We attempt to be as accurate as possible and to eliminate errors; however, we do not warrant that all Product descriptions, photographs, pricing and other information are accurate, complete, reliable, current or error-free. In the event of an error, whether on the Services, in an order confirmation, in processing an order or delivering a Product, we reserve the right to correct such error and revise your order accordingly (including charging the correct price) or to cancel the order and refund any amount charged.

### 5 User Content

Our Services may allow you to create, post, store and share content, including messages, text, photos, videos and other materials (collectively, "**User Content**"). Except for the license you grant below, you retain all rights in and to your User Content, as between you and Outdoor Voices.

You grant Outdoor Voices a perpetual, irrevocable, nonexclusive, royalty-free, worldwide, fully-paid, and sub-licensable license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, publicly perform and display your User Content and any name, username or likeness provided in connection with your User Content in all media formats and channels now known or later developed without compensation to you. When you post or otherwise share User Content on or through our Services, you understand that your User Content and any associated information (such as your username and date of Product review) will be visible to the public. You may not to create, post, store or share any User Content that violates these Terms or for which you do not have all the rights necessary to grant us the license described above.

### 6 Prohibited Conduct and Content

You will not violate any applicable law, contract, intellectual property or other third-party right or commit a tort, and that you are solely responsible for your conduct while accessing or using our Services. You will not:

- Engage in any harassing, threatening, intimidating, predatory or stalking conduct;
- Use or attempt to use another user's account without authorization from that user and Outdoor Voices;

- Use our Services in any manner that could interfere with, disrupt, negatively affect or inhibit other users from fully enjoying our Services or that could damage, disable, overburden or impair the functioning of our Services in any manner;
- Reverse engineer any aspect of our Services or do anything that might discover source code or bypass or circumvent measures employed to prevent or limit access to any part of our Services;
- Attempt to circumvent any content-filtering techniques we employ or attempt to access any feature or area of our Services that you are not authorized to access;
- Develop or use any third-party applications that interact with our Services without our prior written consent, including any scripts designed to scrape or extract data from our Services;
- Bypass or ignore instructions contained in our robots.txt file, accessible at [outdoorvoices.com/robots.txt](http://outdoorvoices.com/robots.txt), that controls automated access to portions of our Services; or
- Use our Services for any illegal or unauthorized purpose, or engage in, encourage or promote any activity that violates these Terms.

You may also only post or otherwise share User Content that is non-confidential and you have all necessary rights to disclose. You may not create, post, store or share any User Content that:

- Is unlawful, libelous, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory or fraudulent;
- Would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party or otherwise create liability or violate any local, state, national or international law;
- May infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party;
- Contains or depicts any statements, remarks or claims that do not reflect your honest views and experiences;
- Impersonates, or misrepresents your affiliation with, any person or entity;
- References or depicts Outdoor Voices or our Products or Services but fails to disclose a material connection to us, if you have one (for example, if you are an Outdoor Voices employee);
- Contains any unsolicited promotions, political campaigning, advertising or solicitations;

- Contains any private or personal information of a third party without such third party's consent;
- Contains any viruses, corrupted data or other harmful, disruptive or destructive files or content; or
- Is, in our sole judgment, objectionable or that restricts or inhibits any other person from using or enjoying our Services, or that may expose Outdoor Voices or others to any harm or liability of any type.

In addition, although we have no obligation to screen, edit or monitor User Content, we may delete or remove User Content at any time and for any reason.

## 7 Feedback

Any questions, comments, suggestions, ideas, original or creative materials or other information you submit about Outdoor Voices or our Services (collectively, "**Feedback**"), is non-confidential and will become the sole property of Outdoor Voices. We will own exclusive rights, including, without limitation, all intellectual property rights, in and to Feedback and will be entitled to the unrestricted use and dissemination of Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

## 8 Limited License; Copyright and Trademark

Our Services and the text, graphics, images, photographs, videos, illustrations, trademarks, trade names, service marks, logos, slogans and other content contained therein (collectively, the "**Outdoor Voices Content**") are owned by or licensed to Outdoor Voices and are protected under both United States and foreign laws. Except as explicitly stated in these Terms, Outdoor Voices and our licensors reserve all rights in and to our Services and the Outdoor Voices Content. You are hereby granted a limited, nonexclusive, nontransferable, non-sublicensable, revocable license to access and use our Services and Outdoor Voices Content for your own personal use; however, such license is subject to these Terms and does not include any right to (a) sell, resell or commercially use our Services or Outdoor Voices Content; (b) copy, reproduce, distribute, publicly perform or publicly display Outdoor Voices Content, except as expressly permitted by us or our licensors; (c) modify the Outdoor Voices Content, remove any proprietary rights notices or markings, or otherwise make any derivative uses of our Services or Outdoor Voices Content; (d) use any data mining, robots or similar data gathering or extraction methods; and (e) use our Services or Outdoor Voices Content other than for their intended purposes. Any use of our Services or Outdoor Voices Content other than as specifically authorized herein, without our prior written permission, is strictly prohibited and will terminate the license granted herein.

## 9 Copyright Complaints

We have a policy of limiting access to our Services and terminating the accounts of users who infringe the intellectual property rights of others. If you believe that anything on our Services infringes any copyright that you own or control, you may notify Outdoor Voices' Designated Agent as follows:

Designated Agent:	Copyright Agent
Address:	1637 East 2 <sup>nd</sup> Street Austin, TX, 78702
Telephone Number:	(646) 681-4454
E-Mail Address:	copyright@outdoorvoices.com

Please see [17 U.S.C. §512\(c\)\(3\)](#) for the requirements of a proper notification. Also, please note that if you knowingly misrepresent that any activity or material on our Services is infringing, you may be liable to Outdoor Voices for certain costs and damages.

## 10 Transfer and Processing of Data

By accessing or using the Services, you consent to the processing and transfer of information relating to you, in and to the United States and other countries, which may have less adequate data protection laws than those found in your country of residency.

## 11 Indemnification

To the fullest extent permitted by applicable law, you will indemnify, defend, and hold harmless Outdoor Voices and our officers, directors, agents, partners and employees (together with Outdoor Voices, the "**Outdoor Voices Parties**") from and against any loss, liability, claim, demand, damages, expenses or costs (collectively, "**Claims**") arising out of or related to (a) your use or misuse of our Services; (b) your User Content or Feedback; (c) your violation of these Terms; and (d) your violation of any rights of another. You agree to promptly notify the Outdoor Voices Parties of any third party Claims and pay all fees, costs and expenses associated with defending such Claims (including but not limited to attorneys' fees). You further agree that the Outdoor Voices Parties shall have control of the defense or settlement of any third party Claims.

## 12 Disclaimers

**We do not control, endorse or take responsibility for any User Content or third-party content available on or linked to by our Services, including User Content.**

**Your use of our Services is at your sole risk. Our Services are provided "as is" and "as available" without warranties of any kind, either express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. In addition, Outdoor Voices does not represent or warrant that our**

**Services are accurate, complete, reliable, current or error-free. While Outdoor Voices attempts to make your access to and use of our Services safe, we cannot and do not represent or warrant that our Services or servers are free of viruses or other harmful components. You assume the entire risk as to the quality and performance of the Services.**

### **13 Limitation of Liability**

**To the fullest extent permitted by applicable law, the Outdoor Voices Parties will not be liable for any indirect, special, incidental or consequential damages of any kind arising out of or in any way related to the access to or use of the Services or the purchase of Products through the Services, including but not limited to any damages caused by or resulting from reliance on any information obtained from the Outdoor Voices Parties and from events beyond the Outdoor Voices Parties' reasonable control, even if Outdoor Voices or the other Outdoor Voices Parties have been advised of the possibility of such damages.**

**To the fullest extent permitted by applicable law, the total liability of the Outdoor Voices Parties for any claim arising out of or relating to these Terms, our Services or Products purchased through the Services, regardless of the form of the action, is limited to the greater of (a) the purchase price of the Product(s) giving rise to the claim or (b) \$100.**

**The limitations set forth in this section will not limit or exclude the Outdoor Voices Parties' liability for personal injury or property damaged caused by the Products you purchase through the Services or for the Outdoor Voices Parties' gross negligence, fraud, intentional, willful, malicious or reckless misconduct.**

### **14 Dispute Resolution; Binding Arbitration**

**Please read the following section carefully because it requires you to arbitrate certain disputes and claims with Outdoor Voices and limits the manner in which you can seek relief from us.**

Except for any dispute arising out of or related to a violation of Section 6 or disputes in which either party seeks to bring an individual action in small claims court or seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, you and Outdoor Voices waive your rights to a jury trial and to have any dispute arising out of or related to these Terms, our Services or Products purchased through our Services resolved in court. Instead, all disputes arising out of or relating to these Terms, our Services or Products purchased through our Services will be resolved through confidential binding arbitration held in New York, New York before and in accordance with the Streamlined Arbitration Rules and Procedures ("**Rules**") of the Judicial Arbitration and Mediation Services ("**JAMS**"), which are available on the [JAMS website](#) and hereby incorporated by reference. You either acknowledge and agree that you have read and understand the rules of JAMS or waive your opportunity to read the rules of JAMS and any claim that the rules of JAMS are unfair or should not apply for any reason.

**You and Outdoor Voices agree that any dispute arising out of or related to these Terms, our Services or Products purchased through the Services is personal to you and Outdoor Voices and that any dispute will be resolved solely through individual arbitration and will not be brought as a class arbitration, class action or any other type of representative proceeding.**

You and Outdoor Voices agree that these Terms affect interstate commerce and that the enforceability of this Section 14 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 Terms and the JAMS 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; provided, however, that the arbitrator does not have the authority to conduct a class arbitration or a representative action, which is prohibited by these Terms. The arbitrator may only conduct 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. You and Outdoor Voices agree that for any arbitration you initiate, you will pay the filing fee and Outdoor Voices will pay the remaining JAMS fees and costs. For any arbitration initiated by Outdoor Voices, Outdoor Voices will pay all JAMS fees and costs. You and Outdoor Voices agree that the state or federal courts of the State of New York and the United States sitting in New York County have exclusive jurisdiction over any appeals and the enforcement of an arbitration award.

**Any claim you may have arising out of or related to these Terms, our Services or Products purchased through our Services must be filed within one year after such claim arose; otherwise, your claim is permanently barred, which means that you and Outdoor Voices will not have the right to assert the claim.**

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 14 by emailing us at [hello@outdoorvoices.com](mailto:hello@outdoorvoices.com). In order to be effective, the opt out notice must include your full name 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 15.

## 15 Governing Law and Venue

**These Terms and your access to and use of our Services, including to purchase Products, will be governed by and construed and enforced in accordance with the laws of New York, without regard to conflict of law rules or principles (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. 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 New York and the United States, respectively, sitting in New York County.**



## 16 Changes to these Terms

We may make changes to these Terms from time to time. If we do make changes, we will post the amended Terms to our Services and update the “Last Updated” date above. We may also attempt to notify you by sending an email notification to the address associated with your account or providing notice through our Services. Unless we say otherwise in our notice, the amended Terms will be effective immediately and your continued access to and use of our Services after we provide notice will confirm your acceptance of the changes. If you do not agree to the amended Terms, you must stop using our Services.

## 17 Termination

We reserve the right, without notice and in our sole discretion, to terminate your right to access or use our Services. We are not responsible for any loss or harm related to your inability to access or use our Services.

## 18 Severability

If any provision or part of a provision of these Terms is unlawful, void or unenforceable, that provision or part of the provision is deemed severable from these Terms and does not affect the validity and enforceability of any remaining provisions.

## 19 Other Terms

The Crazy Egg [Terms of Use](#) (“Crazy Egg Terms”) and [Privacy Policy](#) shall apply with respect to the services provided by Crazy Egg in connection with our Services. In particular, you agree that the disclaimers of liability, the limitation of liability set forth in Section 10 (Limitation of Liability) and the terms of Section 15 (Arbitration and Class Action Waiver) of the Crazy Egg Terms shall apply in connection with your access to or use of Crazy Egg’s services. Crazy Egg and its affiliates shall be entitled to enforce this section as third party beneficiaries.

## 20 Miscellaneous

These Terms constitute the entire agreement between you and Outdoor Voices relating to your access to and use of our Services. The failure of Outdoor Voices to exercise or enforce any right or provision of these Terms will not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual effect. Except as otherwise provided herein, these 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.

## 21 Name and Likeness Release

For good and valuable consideration the receipt, adequacy and sufficiency of which are hereby acknowledged, I hereby give Outdoor Voices and any parties working with Outdoor Voices permission to record or take (or acknowledge that such parties have recorded or taken) recordings and/or still photographs (“**Footage**”) of me at and around exercise events staged by Outdoor Voices. I further grant the right to include all or any portion of such Footage in any audiovisual offering distributed via any means or media in perpetuity (including distributions made for commercial purposes). I hereby waive any right that I may have to inspect or approve any finished product. I acknowledge and agree that I am not being compensated for my appearance and that the opportunity to appear constitutes sufficient consideration. I hereby represent and warrant that I have the right to make this release and that my granting this release and the rights conveyed thereby will not infringe the rights of any third party.

## 22 Liability Release and Hold Harmless

I hereby release and forever discharge and agree to hold harmless Outdoor Voices and any parties working with Outdoor Voices on the staging of any exercise events (including, but not limited to, owners/operators of the venue where such events are taking place and any media distribution entities involved in the promotion or recording thereof), and each of its/their parent, subsidiary, and affiliated companies, and the officers, employees, and agents of each (each such entity or individual, a “**Released Party**”) of and from any and all losses, damages, claims, liabilities or expenses of any kind or nature (and whether accruing to me, my heirs or my personal representatives) including without limitation for injuries (including personal injury and death), illness, or any other cause, whether or not caused or alleged to be caused in whole or in part by the action, negligence, failure to act or condition of the property, facilities or equipment of any Released Party and that arise out of or in connection with the event or my participation therein or attendance thereat.