

Xometry, Inc.

Last Updated: 10/29/2020

THIS AGREEMENT INCLUDES A CLASS ACTION WAIVER AND A WAIVER OF JURY TRIALS, AND REQUIRE BINDING ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES.

This Customer Services Agreement (the “**Agreement**”) is made and entered between Xometry, Inc. (“**Xometry**”) and you (“**You**” or “**Your**”), as of the date that You accept this Agreement as provided in this preamble. PLEASE READ THIS AGREEMENT CAREFULLY. BY ACCESSING OR USING XOMETRY’S WEBSITE (THE “**WEBSITE**”), INCLUDING PLACING AN ORDER WITH XOMETRY FOR MANUFACTURING SERVICES (THE “**SERVICES**”), CLICKING ON THE “I ACCEPT” BUTTON, AND/OR COMPLETING THE REGISTRATION PROCESS, YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THIS AGREEMENT, (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH XOMETRY, AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT PERSONALLY OR ON BEHALF OF THE ENTITY YOU REPRESENT. IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THIS WEBSITE OR THE SERVICES. Xometry’s General Terms and Conditions available at: www.xometry.com/terms (“**General Terms**”) are incorporated herein by reference.

PLEASE NOTE that Xometry may modify these terms and conditions at any time, and such modifications shall be effective immediately upon posting of the modified version on the Website for orders placed after such modifications have been posted. Xometry will also update the “Last Updated” date at the top of this Agreement. If Xometry makes any material changes, and You have registered with Xometry to create an Account (as defined below), Xometry may also send you an email to the last email address You provided pursuant to this Agreement. Any changes to this Agreement will be effective immediately for new users of the Website and/or Services and will be effective thirty (30) days after posting or providing notice of such changes on the Website for existing users (whichever is earlier). Xometry may require You to provide consent to the updated Agreement in a specified manner before further use of the Website and/or Services is permitted. If You do not agree to any change(s) after receiving a notice of such change(s), You shall stop using the Website and/or Services. Otherwise, Your continued use of the Website and/or Services shall be deemed Your conclusive acceptance of the modified terms and conditions.

1. About Xometry’s Services. Xometry hosts and maintains an online platform available at the Website that enables Xometry’s customers to upload their three dimensional (3D) models for their manufacturing projects. Xometry maintains a vendor manufacturing program consisting

of a network of third party manufacturers (each, a “**Partner**”) capable of performing manufacturing services on Xometry’s behalf in order to offer our customers greater efficiencies and the best pricing and quality of manufacturing services. When a customer uploads their Specifications (as defined below) for a manufacturing project, Xometry will either manufacturer, or subcontract with one of Xometry’s Partners to have manufactured, the parts, assemblies or items to be delivered pursuant to the customer’s order (each, a “**Part**”).

2. **REGISTRATION.** In order to use certain Services, you may be required to register for an account (“**Account**”). In registering for the Services, You agree to (1) provide true, accurate, current and complete information about You as prompted in the Website account details section (“**Registration Data**”); and (2) maintain and promptly update Your Registration Data to keep it true, accurate, current and complete. You are responsible for all activities that occur under your Account. You may not share your Account or password with anyone, and you agree to (x) notify Xometry immediately of any unauthorized use of your password or any other breach of security; and (y) exit from your Account at the end of each session. If you provide any information that is untrue, inaccurate, not current or incomplete, or Xometry has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Xometry has the right to suspend or terminate your Account and refuse any and all current or future use of the Website and Service (or any portion thereof).

3. ORDERING PROCESS

3.1. **Placing Orders.** In order to place an order for a Part, You must upload an accepted three dimensional (3D) model for the Part that You would like to be produced pursuant to the terms of this Agreement. During the ordering process You may choose, from the list of available options, the material, color, surface and size of the measurement (mm or inches) for your Part. Certain restrictions with respect to the thickness, material, color and surfaces may apply. For an additional fee, You may request material certifications and inspection reports for Your Parts during the ordering process. XOMETRY RESERVES THE RIGHT TO ALTER, MODIFY OR CHANGE THE SPECIFICATIONS OF ANY PART IN THE EVENT XOMETRY DETERMINES THAT THE MANUFACTURE OF A PART IN ACCORDANCE WITH YOUR SPECIFICATIONS IS IMPOSSIBLE, ECONOMICALLY IMPRACTICABLE, OR OTHERWISE IS LIKELY TO HAVE AN ADVERSE IMPACT ON THE RESULTING PART. You will be able to see and review the order and the estimated costs (production, delivery, and other taxes when applicable) provided by Xometry to You before finalizing the order (the “**Quote**”). No contract to manufacture any Part exists until Xometry acknowledges your acceptance of its Quote by a confirmatory email or other appropriate means of communication, as determined by Xometry in its sole discretion. SINCE EACH ORDER IS CUSTOM MANUFACTURED, YOU MAY NOT CANCEL AN ORDER ONCE IT HAS BEEN PLACED. Xometry, at its sole discretion, may permit a customer to cancel an order and may charge a fee

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not to exceed 3% of the total order value if a customer requests such a cancellation from Xometry.

3.2 Specifications. Upon acceptance of Xometry's Quote, Xometry will, subject to the terms herein, manufacture, or have manufactured, the Part(s) in accordance with the 3D geometry and features related to the Part(s) and to the tolerances as set forth in the Quote (except if located in the Notes section) (collectively, the "**Specifications**"). You are solely responsible for ensuring that the Specifications in the Quote and other information You submit in Your order is accurate and complete before paying for it. YOU MAY NOT AMEND OR MODIFY THE SPECIFICATIONS after YOU HAVE PLACED YOUR ORDER.

3.3 Xometry Cancellations. Xometry may, at any time during the quotation, ordering and the manufacturing process, revoke and/or cancel any Quote/order, if there are technical or others reasons (such as a concern about intellectual property ownership of the design or the legality of the Part) to do so. In such case, Xometry will reimburse You all monies paid for such Part, if any.

3.4 Limitations. The prices charged are calculated based on building types with a certain attainable level of detail. Xometry will manufacture Your Part(s) in accordance to our Manufacturing Standards www.xometry.com/manufacturing-standards (the "**Manufacturing Standards**"), which are incorporated herein by reference, unless Xometry has agreed to different standards in the Quote. Due to technical limitation of current technology, it may be impossible or commercially impracticable to manufacture certain Parts in accordance with Your Specifications. In such cases, Xometry will use its commercially reasonable efforts to contact You. In any case, Xometry (AND ITS PARTNERS) then reserves the right to either build the Part with a different thickness and/or switch to another production technique, and apply any modification to the order (such as modification of price, of terms/term of delivery, etc.) resulting from such decision. You agree to pay Xometry such additional compensation (if any) as may be necessary that arise out of any such amended Specifications.

3.5 Subcontracting. You acknowledge and agree that Xometry may subcontract or otherwise delegate any order you place for a Part to one of Xometry's Partners. As such, you acknowledge and agree that Xometry may share your Specifications with our Partners in order to process and manufacture your order. You will not have any obligation to pay any Partner directly.

3.6 Compliance with Export Controls. The data, items, deliverables, and services may be subject to national, foreign, and international trade and export control laws and regulations ("Export Laws"). You shall identify any three dimensional (3D) models and resulting items that are controlled under Export Laws at the time of providing them to Xometry, including but not limited to identify data and items that are controlled under the International Traffic in Arms Regulations ("ITAR"). NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, YOU

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SHALL BE LIABLE FOR ALL DAMAGES, LOSSES, AND LIABILITIES INCURRED BY XOMETRY AS A RESULT OF YOUR NON-COMPLIANCE WITH EXPORT LAWS OR FAILURE TO ACCURATELY IDENTIFY APPLICABLE EXPORT LAWS.

3.7 Prohibited Items. While Xometry wants to give its customers the freedom they need to produce the most creative, imaginative and useful projects and Parts, Xometry maintains the right to refuse any Part that is illegal or designed to harm human beings, or which Xometry otherwise deems inappropriate in its sole discretion. As such, Xometry prohibits the use of its Services to manufacture Parts designed for use or integration into firearms for such Parts that require any federal, state or local licenses to manufacture.

4. PRICING AND PAYMENT; XOMETRY REFERRAL PROGRAM

4.1. Payment. You agree to pay all fees or charges to Your Account in accordance with the fees, charges and billing terms in effect at the time a fee or charge is due and payable. Unless otherwise expressly agreed in advance by Xometry, all invoices are due thirty (30) days after the date of invoice. Xometry reserves the right to require payment in advance for certain orders. All invoices are due in full, without any deductions or offsets. All invoices will be deemed final and binding unless You object to an invoice, in writing, within ten (10) days of receipt. All invoices not paid in full within such thirty (30) day period shall bear interest at the rate of 1.5% per month or the highest rate permitted under law. Xometry may also draw down on any Xometry Credits held in your Account in the event you fail to pay any past due invoices within forty five (45) days of their due date. Xometry may invoice you in installments. You must provide Xometry with a valid credit card (Visa, MasterCard, or any other issuer accepted by us) ("**Payment Provider**"). Your Payment Provider agreement governs Your use of the designated credit card, and You must refer to that agreement and not this Agreement to determine your rights and liabilities. By providing Xometry with Your credit card number and associated payment information, You agree that Xometry is authorized to immediately invoice your Account for all fees and charges due and payable to Xometry hereunder and that no additional consent or notice is required. You agree to immediately notify Xometry of any change in your billing address or the credit card used for payment hereunder. Xometry reserves the right at any time to change its prices and billing methods, either immediately upon posting notice on the Website or by email delivery to you. All prices are calculated in US Dollars and payment to Xometry must be in the form of US Dollars.

4.2. Taxes and Costs. Unless otherwise stated, the price quoted with respect to the manufacture of any particular Part includes the cost for the Services rendered by Xometry, the manufacturing of the Part and the standard shipping (as selected by Xometry), as well as all applicable sales and use taxes. Additional fees may apply for any alternate shipping methods

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and/or shipping insurance. You will be liable for all other transaction duties and taxes (other than taxes based on Xometry's net income).

4.3. **Suspension of Services.** Xometry reserves the right to suspend performance hereunder (including the manufacture of the Part) in the event you fail to pay all outstanding amounts when due Xometry retains full legal title to Parts until it has received full payment with respect to such Parts and payment on any other Parts that You have ordered. Xometry reserves the right to refrain from manufacturing additional orders, or additional components of an existing order, as long as the outstanding issued invoices remain unpaid.

4.4. **Xometry Credits.** Registered users can earn credits ("**Xometry Credits**") through the following means.

- **Refer a Colleague.** In order to refer a colleague and earn Xometry Credits, registered users must send their unique referral link to facilitate the invitation, or post their unique link on either Twitter or Facebook. If a Referred Colleague (as defined below) clicks on the link provided to them and purchases a Part, Your Account will be credited with 50 Xometry Credits for initial purchase only. As used herein, a "**Referred Colleague**" means any potential customer of Xometry who, prior to the time of the referral: (i) has not purchased any Parts from Xometry, and (ii) has not created an Account. Xometry Credits will only be awarded for the Referred Colleague's initial purchase of a Part, and you will not receive or be entitled to any Xometry Credits in connection with any subsequent purchases made by any Referred Colleague.

Xometry Credits may be solely redeemed towards the purchase of Parts. Each Xometry Credit is equal to \$1 and may be redeemed at checkout on future orders. Credits expire after 18 months and are redeemed on a first in, first out basis. Xometry Credits are not legal tender and cannot be reloaded, resold, transferred for value, redeemed for cash or applied to any other account, except to the extent required by applicable law. Xometry prohibits and does not recognize any purported transfers of Xometry Credits outside the Services, or the purported sale, lease, gift or trade in the "real world" of anything that appears or originates outside of the Services.

XOMETRY RESERVES THE RIGHT TO DRAW DOWN UPON ON YOUR XOMETRY CREDITS, IF ANY, IN THE EVENT OF ANY LATE PAYMENT(S) OR OTHER MATERIAL BREACH OF THIS AGREEMENT BY YOU.

5. SHIPMENT ESTIMATES; RISK OF LOSS IN TRANSPORT

5.1 **Shipment Estimates.** Quotations issued by Xometry will contain an estimated date of shipment, calculated on the basis of the input data. The term of delivery generated by the online ordering system gives a preliminary indication of planned date of shipment though does

not bind Xometry in any way. The estimated shipment date is based on the working conditions applicable at the time the agreement is concluded and on the punctual delivery of the materials ordered by Xometry for the performance of the work. Should a delay rise for which Xometry is not responsible, as a result of a change in the aforementioned working conditions or because materials ordered in time for the performance of the work are not delivered on time, the shipment date shall be extended as required and Xometry will not be liable for such delay.

5.2 **Risk of Loss.** Unless otherwise agreed, all sales of Parts shall be ex-works (Incoterms 2000). In the event that You require delivery of the Parts otherwise than ex-works, You must contact Xometry in order to detail its requirements. Xometry, at its discretion, shall arrange the delivery requirements including, without limitation, transport insurance, the mode of transport (Xometry reserves the right to vary the mode of transport if any regulations or other relevant considerations so require) and any special packaging requirements. All costs, taxes, duties and charges related to fulfilling any of Your requests under this Section, shall be paid by You, unless otherwise agreed by both parties.

6. REPLACEMENT PARTS

6.1. **No Warranty of Specifications.** Upon delivery of a Part, You should inspect the Part carefully. All Parts will be deemed accepted upon delivery to You. You acknowledge and agree that Xometry will use commercially reasonable efforts to manufacture or have the Part manufactured by our Partners, in accordance with Your Specifications. However, since You are solely responsible for the Specifications, and the manufacture of certain Parts in accordance with your Specifications may be impossible or otherwise commercially impracticable, Xometry does not warrant that Your Part can or will be manufactured in accordance with Your Specifications. IN ADDITION, EXCEPT AS EXPRESSLY PROVIDED HEREIN, XOMETRY DOES NOT WARRANT THAT THE PART WILL MEET YOUR REQUIREMENTS OR BE WILL BE MERCHANTABILITY OR FIT FOR YOUR PARTICULAR PURPOSE.

6.2. **Specifications Warranty; Remedy.** Xometry represents and warrants for a period of three (3) business days following the delivery of the Part (the "**Warranty Period**"), that the Part shall conform to the Specifications for such Part. In the event You notify Xometry during the Warranty Period that the Part fails to comply with the applicable Specifications in all material respects, Xometry will, as Your sole and exclusive remedy, replace such non-conforming Parts at Xometry's sole cost and expense, *provided* (i) You return the non-conforming Part(s) to Xometry within three (3) business days of your notice of non-conformance, and (ii) Xometry reasonably confirms such non-conformity. No returns will be accepted by Xometry unless You have notified Xometry within the Warranty Period. If You fail to contact Xometry within the Warranty Period, Xometry shall have no further obligations with respect to such Part and ALL SALES WILL BE DEEMED FINAL AND SUCH PARTS MAY NOT BE RETURNED TO Xometry.

7. INTELLECTUAL PROPERTY

7.1. **License.** Subject to the terms herein, Xometry grants to You a limited, revocable, non-exclusive license to use the Website for your personal or internal business purposes. Xometry and its licensors retains all ownership and intellectual property rights to the Website and all content therein. You shall not or permit any third party to: (i) reverse engineer, disassemble or decompile the Website, the pricing and matching algorithms of Xometry, or Xometry's geometry parsing engine; (ii) use any manual or automated software devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools or the like) to "scrape" or download data from any web pages contained in the Website; (iii) access the Website in order to build a similar or competitive website, application or service; (iv) except as expressly stated herein, no part of the Website may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; or (v) use the Website for any illegal or illicit purpose, including to manufacture any products, components, goods or tools designed or intended for use in firearms. Without limiting the foregoing, You acknowledge and agree that the pricing and matching algorithms, processes and mechanisms used by Xometry, along with Xometry's geometry parsing engine are the proprietary information and trade secrets of Xometry. In the event of You attempt to reverse engineer such pricing and matching algorithms, processes and/or mechanisms, or Xometry's geometry parsing engine, Your right to use the Website and Service shall immediately cease, and Xometry will take any action it deems necessary or appropriate to protect its rights and interests.

7.2. **Trademarks.** The Website contains names, which are trademarks, service marks and/or brand names of Xometry and may not be used without the written permission of Xometry. Other trademarks, service marks and trade names that may appear on or in the Website are the property of their respective owners.

7.3. **Your Content.** Xometry does not claim any ownership over your Specifications or any content, data or other materials you upload to or otherwise make available on the Website ("**Your Content**"). You are solely responsible for Your Content that You upload to the Website. You hereby grant Xometry a non-exclusive, perpetual, royalty free, fully paid-up, sublicensable (to our Partners), right and license to reproduce, publicly perform, publicly display, and use Your Content for the purpose of designing, manufacturing and delivering your Parts to You, and to provide you any other Services you request. You further acknowledge and agree that Xometry may use Your Content on an aggregated and anonymized basis to improve the Website and Services, including without limitation, to improve our pricing algorithms and help manufacture Parts in a more efficient and expedient manner. By submitting an order to Xometry, You represent and warrant that You are the owner and/or You have obtained the rights necessary to grant Xometry granted herein use without any violation of any intellectual

property rights, or payment by Xometry of any amounts to any third party. You further represent and warrant that Your Content does not infringe upon, misappropriate, or violate any third party's rights, including intellectual property, privacy and publicity rights. If Xometry, in its sole commercial discretion, determines that the Specifications You submit to the Website infringes upon the intellectual property rights of any third party, Xometry reserves the right to either not manufacture the Part(s) based on your Specifications.

8. INDEMNIFICATION BY YOU. You agree to indemnify and hold harmless Xometry and its officers, directors, shareholders, agents, licensees, employees, successors and assigns, from and against any and all damages, liabilities, awards, losses, costs and expenses including, without limitation, reasonable attorneys' fees and court costs: (i) arising out of any breach by You of any undertaking, warranty, representation or agreement contained herein; (ii) arising out of a claim that a Part manufactured by Xometry pursuant to an order hereunder violates any law, regulation or ordinance; (iii) arising out of a claim with respect to the Part (whether arising out of product liability, strict liability, negligence or otherwise), including claims related to any injury, death or damage to any person or property caused by the Part; or (iv) arising out of any claim that any Specification, infringes upon or violates any patent, trade secret, copyright, trademark, service mark, right of publicity or other right of any third party.

9. DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED HEREIN, THE PARTS MANUFACTURED BY XOMETRY PURSUANT TO AN ORDER SUBMITTED ON THIS WEBSITE AS WELL AS THE WEBSITE AND SERVICES, AND ALL INFORMATION AND CONTENT THEREIN, ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. XOMETRY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE WEBSITE, SERVICES AND PARTS, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY AGAINST INTERFERENCE OR INFRINGEMENT. XOMETRY DOES NOT WARRANT THAT ANY SUCH PARTS OR THE USE OF THE WEBSITE OR SERVICES WILL BE UN INTERRUPTED OR ERROR FREE OR THAT ANY ERROR OR DEFECTS WILL BE OR CAN BE CORRECTED. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, IN WHICH CASE SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO ALL USERS.

9.1. BECAUSE THE PARTS ARE BASED ON YOUR SPECIFICATIONS, XOMETRY MAKES NO WARRANTY, REPRESENTATION, OR CONDITION THAT: (1) THE PARTS WILL MEET YOUR REQUIREMENTS, (2) THE PARTS ARE FIT FOR ANY PARTICULAR PURPOSE, OR MERCHANTABILITY, OR (3) THE PARTS ARE DEFECT OR ERROR-FREE.

9.2. THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. XOMETRY MAKES NO WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO THE

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SERVICES, INCLUDING BUT NOT LIMITED TO, THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF THE SERVICES.

9.3. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM XOMETRY OR THROUGH THE WEBSITE WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

9.4. ANY CONTENT DOWNLOADED FROM OR OTHERWISE ACCESS THROUGH THE WEBSITE IS ACCESSED AT YOUR OWN RISK, AND YOU SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PERSON OR PROPERTY, INCLUDING, BUT NOT LIMITED TO, YOUR COMPUTER SYSTEM AND ANY DEVICE YOU USE TO ACCESS THE WEBSITE, OR ANY OTHER LOSS THAT RESULTS FROM ACCESSING SUCH CONTENT.

9.5. YOU ACKNOWLEDGE AND AGREE THAT XOMETRY IS NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD XOMETRY LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING FOR ANY PART MANUFACTURED BY A THIRD PARTY.

10. LIMITATION OF LIABILITY

10.1. **Disclaimer of Certain Damages.** XOMETRY SHALL NOT IN ANY EVENT BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, OR FOR ANY LOSS OF PROFITS, REVENUES, BUSINESS OPPORTUNITIES OR FOR LOSS OF INCOME, BARGAIN, REVENUE, CONTRACTS, GOODWILL, USE, ENJOYMENT, TIME, DATA, OR ELECTRONICALLY TRANSMITTED ORDERS OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE OR EMOTIONAL DISTRESS, WHETHER OR NOT XOMETRY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH: (1) THIS AGREEMENT OR THE USE OR INABILITY TO USE THE WEBSITE OR SERVICES; (2) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES RESULTING FROM ANY GOODS, PARTS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED THROUGH THE WEBSITE OR SERVICES; (3) ANY UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS, SPECIFICATIONS, TOLERANCES OR DATA; (4) YOUR PARTS; OR (5) ANY OTHER MATTER RELATED TO THE WEBSITE AND SERVICES, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY.

10.2. **Cap on Liability.** UNDER NO CIRCUMSTANCES WILL XOMETRY BE LIABLE TO YOU FOR MORE THAN THE GREATER OF (I) THE AMOUNT RECEIVED BY XOMETRY FROM YOU UNDER A GIVEN ORDER FOR ANY CLAIM RELATING TO A GIVEN ORDER, OR (II) ONE HUNDRED DOLLARS (\$100).

10.3. **Exclusion of Damages.** CERTAIN JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

10.4. **Basis of the Bargain.** THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN XOMETRY AND YOU.

11. **RELEASE OF LIABILITY.** YOU ACKNOWLEDGE AND AGREE THAT THE PARTS AND THEIR MANUFACTURE, ARE BASED ON SPECIFICATIONS PROVIDED BY YOU. ACCORDINGLY, YOU AGREE THAT UNDER NO CIRCUMSTANCE WILL XOMETRY BE LIABLE FOR ANY DAMAGE OR LIABILITY RESULTING FROM ANY PART, INCLUDING ANY PART DEFECT RESULTING FROM THE MANUFACTURE OF A PART IN ACCORDANCE WITH THE SPECIFICATIONS. You hereby release Xometry and its affiliates, and their officers, directors, employees, agents, and consultants and their successors from claims, demands, any and all losses, damages, rights, and actions of any kind, including personal injuries, death and property damage, that is either directly or indirectly related to or arises from your Part(s). If you are a California resident, you hereby waive California Civil Code Section 1542, which states, "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor".

12. TERM AND TERMINATION

12.1. **Term.** This Agreement commences on the date when You accept it (as described in the preamble above) and remain in full force and effect while you use the Services, unless terminated in accordance with the terms herein.

12.2. **Termination of Services by You.** If You want to terminate the Services provided by Xometry, You may do so by (a) notifying Xometry at any time and (b) closing Your Account for all of the Services that You use. Your notice should be sent, in writing, to Xometry's address set forth below.

12.3. **Termination of Services by Xometry.** Xometry has the right to, immediately and without notice, suspend or terminate this Agreement or Your use of the Website and Services (with or without cause), including if Xometry becomes aware of any possible violations by You of this Agreement. In the event Xometry determines, in its sole discretion, that You have breached any portion of this Agreement, Xometry reserves the right to: (i) warn you via email (to any email address you have provided to Xometry) that you have violated this Agreement; (ii) delete Your Content provided by You or Your agent(s) to the Website; (iii) notify and/or send Your Content to and/or fully cooperate with the proper law enforcement authorities for further action; and/or (iv) pursue any other action which Xometry deems to be appropriate.

12.4. Effect of Termination. Termination of any Service includes removal of access to such Service and barring of further use of the Service. Termination of all Services also include deletion of Your password and all related information, files and Your Content associate with or inside Your Account. Xometry will not have any liability whatsoever to You for any suspension or termination, including deletion of Your Content. All provisions of this Agreement which by their nature should survive, shall survive termination of the Services, including without limitation, ownership provisions, warranty disclaimers, payment obligations, indemnification obligations and limitation of liability.

13 MISCELLANEOUS

13.1 Electronic Communications. The communications between You and Xometry use electronic means, whether You visit the Website or send Xometry e-mails, or whether Xometry posts notices on the Website or communicates with You via e-mail. For contractual purposes, You (1) consent to receive communications from Xometry in an electronic form; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Xometry provides to You electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect Your statutory rights.

13.2 Assignment. This Agreement, and Your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by You without Xometry's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

13.3 Force Majeure. Neither party shall be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

13.4 Questions, Complaints, Claims. If You have any questions, complaints or claims with respect to the Website or Services, please contact us at: info@xometry.com. We will do our best to address Your concerns. If You feel that Your concerns have been addressed incompletely, we invite You to let us know for further investigation.

13.5 Limitations Period. YOU AND XOMETRY AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE WEBSITE OR THE SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

13.6 Arbitration Agreement; Class Waiver; Waiver of Trial by Jury. Please read this Section 13.6 ("**Arbitration Agreement**") carefully. It is part of Your contract with Xometry and affects

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Your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.

(a) *Applicability of Arbitration Agreement.* All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with this Agreement or the use of any product or service provided by Xometry that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Arbitration Agreement. This Arbitration Agreement applies to You and Xometry, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or goods provided under this Agreement.

(b) *Notice Requirement and Informal Dispute Resolution.* Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute ("**Notice**") describing the nature and basis of the claim or dispute, and the requested relief. A Notice to Xometry should be sent to: info@xometry.com. After the Notice is received, You and Xometry will attempt to resolve the claim or dispute informally. If You and Xometry do not resolve the claim or dispute within 30 days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

(c) *Arbitration Rules.* Arbitration shall be initiated through the American Arbitration Association ("**AAA**"), an established alternative dispute resolution provider ("**ADR Provider**") that offers arbitration as set forth in this section. If AAA is not available to arbitrate, the parties shall agree to select an alternative ADR Provider. The rules of the ADR Provider shall govern all aspects of this arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with this Agreement. The AAA Commercial Arbitration Rules governing the arbitration are available online at www.adr.org or by calling the AAA at 1-800-778-7879. The arbitration shall be conducted by one to three, neutral arbitrators, at the discretion of Xometry. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any hearing will be held in Wilmington, Delaware, unless the parties agree otherwise. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Each party shall bear its own costs (including attorney's fees) and disbursements arising out of the arbitration, and shall pay an equal share of the fees and costs of the ADR Provider.

(d) Additional Rules for Non-appearance Based Arbitration: If non-appearance arbitration is elected, the arbitration shall be conducted by telephone, online and/or based solely on written submissions; the specific manner shall be chosen by the party initiating the arbitration. The arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties.

(e) Time Limits. If You or Xometry pursue arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim) and within any deadline imposed under the AAA Rules for the pertinent claim.

(f) Authority of Arbitrator. If arbitration is initiated, the arbitrator will decide the rights and liabilities, if any, of You and Xometry, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the AAA Rules, and this Agreement. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon You and Xometry.

(g) Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in court and are subject to very limited review by a court. In the event any litigation should arise between You and Xometry in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND XOMETRY WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

(h) Waiver of Class or Consolidated Actions. ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. If, however, this waiver of class or consolidated actions is deemed invalid or unenforceable with respect to a particular claim or dispute, then notwithstanding anything to the contrary in this Arbitration Agreement or Agreement, neither You or Xometry is entitled to arbitration of such claim or dispute. Instead, all such claims and disputes will then be resolved in a court as set forth in Section 13.6(n).

(i) Severability. If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.

(j) Right to Waive. Any or all of the rights and limitations set forth in this Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or effect any other portion of this Agreement.

(k) Survival of Agreement. This Arbitration Agreement will survive the termination of Your relationship with Xometry.

(l) Small Claims Court. Notwithstanding the foregoing, either You or Xometry may bring an individual action in small claims court.

(m) Emergency Equitable Relief. Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

(n) Courts. In any circumstances where the foregoing Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within Montgomery County, Maryland for such purpose.

13.7 Governing Law. This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Maryland, consistent with the Federal Arbitration Act, without giving effect to any principles that provide for the application of the law of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

13.8 Independent Contractor. Your relationship to Xometry under this Agreement is that of an independent contractor. Nothing in this Agreement is intended or should be construed to create a partnership, joint venture, or employer-employee relationship between Xometry and You. You agree to take no position with respect to or on any tax return or application for benefits, or in any proceeding directly or indirectly involving Xometry that is inconsistent with You being an independent contractor (and not an employee) of Xometry. You are not an agent of Xometry and are not authorized, and must not represent to any third party that You are authorized, to make any commitment or otherwise act on behalf of Xometry.

13.9 Notice. Where Xometry requires that You provide an e-mail address, You are responsible for providing Xometry with Your most current e-mail address. In the event that the last e-mail

<https://www.xometry.com/service-agreement>

address You provided to Xometry is not valid, or for any reason is not capable of delivering to You any notices required/ permitted by this Agreement, Xometry's dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to Xometry at the following address: info@xometry.com. Such notice shall be deemed given when received by Xometry by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.

13.10 **Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

13.11 **Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

13.12 **Entire Agreement.** This Agreement are the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter. Unless otherwise specifically agreed to by the parties, in the event of any conflict between the terms of this Agreement, the General Terms, or any order for Parts, the order of precedence is as follows: (i) Manufacturing Standards; (ii) this Agreement; (iii) the General Terms; and (iv) the order for Parts. Unless otherwise specifically agreed in a writing by the parties, the parties acknowledge that the pre-printed provisions on the reverse side of any quotation, order, acknowledgement or invoice will be deemed deleted and of no effect whatsoever.