Xometry PO Advance Service

Terms and Conditions

Last Revision Date:  August 23, 2021

By checking “I Agree to the Terms and Conditions of this Agreement” or otherwise confirming your acceptance of these Terms and Conditions, you submit your application to participate in the PO Advance Service (the “PO Advance Service”) described in these terms and conditions (as it may hereafter be amended, modified, or supplemented, the “Agreement”) and provide your acceptance of this Agreement, subject to Xometry’s acceptance of your participation in the PO Advance Service. You agree that your submission of that application makes this Agreement a legally binding agreement between Xometry, Inc. (“Xometry,” “we,” “us,” or “our”), and you (the “Partner”). This Agreement governs your use of the PO Advance Service. The PO Advance Service is a business loan program offered by Xometry to approved members of the Xometry Manufacturing Network who maintain existing Xometry Pay accounts (“Accounts”). Defined terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the Xometry Pay Terms and Conditions, located here: https://www.xometry.com/xometry-pay-terms-and-conditions/ (the “Xometry Pay Terms and Conditions”).

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING the PO Advance Service. This Agreement supplements, but does not replace, the Partner Terms and Conditions located at www.xometry.com/legal (the “Partner Terms”) and the Xometry Pay Terms and Conditions, each of which are incorporated herein by reference, any Work Order (as defined in the Partner Terms), and any other agreement between you and Xometry.

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT AND INCLUDES A WAIVER OF A RIGHT TO A TRIAL BY JURY. See Section 9 (Arbitration Agreement; Class Waiver; Waiver of Trial by Jury) below.

1. OVERVIEW OF THE PO ADVANCE SERVICE

1.1. Purpose of the PO Advance Service. The PO Advance Service is a discretionary and uncommitted service offered to approved members of the Xometry Manufacturing Network. The purpose of the PO Advance Service is to allow established Partners to apply for loans (each, an “Advance”) based on amounts payable to Partner under non-Xometry purchase orders (i.e., purchaser orders with your customers resulting from jobs that did not originate on the Xometry Job Board) (each, an “External PO”, and each customer to an External PO, a “Customer”), subject
to a Fee (as defined below), to be expressed as a percentage of the total amount of the Advance approved and paid by Xometry, and subject to a maximum Advance amount, per Advance and/or in aggregate across all outstanding Advances (each, an “Advance Limit”), to be determined on a Partner-by-Partner basis by Xometry in its sole discretion, and your continued compliance with this Agreement and each other document or agreement now or hereafter entered into between you and Xometry (collectively, the “Xometry Documents”). Xometry may also, in its sole discretion, from time to time, set and/or change minimum per Advance thresholds and decline to provide Advances below those thresholds (each, an "Advance Threshold").

1.2. Requests for Advances. You may submit requests for Advances for consideration by Xometry through the Shop Finances messaging system or using such other method of Electronic Notice (as defined below) as may be permitted by Xometry (each, an “Advance Request”). For each Advance Request, you will be required to provide: (i) a copy of your External PO (an “Accepted PO”) between you and a Customer, (ii) the total payment amount due under such Accepted PO (the "Total PO Advance Amount"), (iii) the date on which the Total PO Advance Amount (or the final installment thereof, if applicable) is due to you under the terms of the Accepted PO (the “PO Pay Date”); and (iv) the amount of the Advance that you are requesting in US dollars (the “Requested Amount”), which amount may not exceed the Total PO Advance Amount.

1.3. Proposals; Rejection; Withdrawal. Xometry will consider Advance Requests and may approve or reject any or all Advance Requests in its sole discretion, including due to a Requested Amount not being consistent with the Advance Limits or Advance Thresholds. If Xometry elects to approve an Advance Request, in whole or in part, it will provide you with a proposal (each, “Proposal”) via Electronic Notice. For each Proposal, Xometry will provide: (i) the amount of the Advance that Xometry has approved (the “Approved Advance Amount”), which may be less than the Requested Amount; (ii) the fee that will be charged by Xometry, which may be expressed as a dollar amount, percentage of the Approved Advance Amount, or in another fashion (the “Fee”), and the Default Fee (if different than as set forth in Section 1.8); and (iii) the date on which the Advance must be repaid by you (“Repayment Date”), which will typically be the earlier of (a) the date that is the number of days allowed for payment set forth on the Accepted PO after the date of your submission of the Advance Request, and (b) the date that is ninety (90) days after your submission of the Advance Request. Xometry will notify you, via Electronic Notice, with a Proposal or with notice that your Advance Request has been rejected within a reasonable period of time after your submission thereof. Xometry may withdraw any Proposal at any time prior to your submission of a corresponding Acceptance (as defined below), and such a withdrawn Proposal will be of no further effect and not subject to acceptance. Accordingly, you understand that Xometry has no obligation or commitment to make any Advance to you and may elect not to provide an Advance in its sole discretion. The making of previous Advances to you shall not limit
our discretion to deny any other Proposal or create any course of conduct to suggest we will approve any further Proposals or make any Advance.

1.4. **Acceptance.** You may submit your acceptance of a Proposal to Xometry via email to pay@xometry.com or using such other method of Electronic Notice provided by Xometry (each, an “Acceptance”). Xometry has no obligation to provide any Approved Advance Amount, or other Advance, unless and until Xometry has provided a corresponding Proposal and you have provided a corresponding Acceptance.

1.5. **Payment of Advances.** Following receipt of an Acceptance, Xometry will promptly transfer, via automated clearinghouse (ACH) into the bank account linked to your Account (the "Bank Account"), the Approved Advance Amount, less the Fee. For clarity, funds availability is at the discretion of the receiving bank and Xometry makes no claims or guarantees on when you will be able to access the funds.

1.6. **Promise to Repay Advances.** In consideration of Xometry extending the Advances to you, you agree to pay Xometry the Approved Advance Amount set forth in any accepted Proposal, and if applicable the Default Payment Amount, in accordance with the terms of this Agreement. The Approved Advance Amount will be automatically debited via automated clearinghouse (ACH) from your Bank Account on the Repayment Date, and you specifically authorize and direct Xometry to direct Stripe, Inc., Xometry's accounts processor and administrator (see the Xometry Pay Terms and Conditions for further information) (“Stripe”), to transfer the Approved Advance Amount to Xometry. You are responsible for repayment of the Approved Advance Amount for which you received an Advance from your own funds, regardless of any collection you make, or fail to make, on the Accepted PO and notwithstanding that the amount of the Advance funds actually deposited into your Bank Account was less than the Approved Advance Amount due to the reduction of such amount by the Fee. You may elect to repay the Approved Advance Amount prior to the applicable Repayment Date. If the amounts in your Bank Account are less than the amounts required to repay the Approved Advance Amount and any Default Fee, you shall promptly pay to Xometry the remaining balance in readily available funds.

1.7. **Default Payment Amount.** If, for any reason including without limitation insufficiency of funds, Xometry is unable to debit the full amount of the Approved Advance Amount applicable to an Advance from your Bank Account on the Repayment Date, then the Approved Advance Amount will be automatically subject to a default fee of 10% of the Approved Advance Amount or such other default fee rate set forth in the Proposal (the “Default Fee”) (the Approved Advance Amount plus such Default Fee, the “Default Payment Amount”), which is in addition to the Fee.

1.8. **Right of Set-off.** If you fail to repay in full any Default Payment Amount on or prior to the thirtieth (30th) day after the applicable Repayment Date (a “Non-Payment Default”), Xometry may set off and apply (without any further demand or notice to or consent from you) any and all
amounts otherwise payable to your Account (the “Set-off Funds”), including without limitation payments pursuant to Work Orders for jobs for which you were engaged through the Xometry Job Board, against the outstanding Default Payment Amount until Xometry recoups the entire Default Payment Amount. You expressly authorize Xometry to retain for itself and instruct Stripe to transfer to Xometry, rather than your Bank Account, any such Set-off Funds until Xometry recoups the full Default Payment Amount. The foregoing right of set-off shall not be Xometry's exclusive remedy for a Non-Payment Default. Xometry may take legal action to recover any unpaid Default Payment Amounts and may pursue any legal or equitable remedy available to us under applicable law in connection with such recovery.

1.9. **Interest Rates.** You acknowledge that the Fees and Default Fees are one-time payments and not annual percentage rates (APR); a calculation of an APR imputed from the Fee and Default Fee would result in an APR significantly higher than the rate for the Fee and Default Fee. You and Xometry agree that, while the amount of the Fee reduces the amount of funds made available to you, such Fee does not constitute an advance fee or advance payment to Xometry; in particular, you are not required to pay out of your Account the amount of the Fee in advance of receiving an Advance. Xometry's intent is that the PO Advance Service complies with all applicable federal and state laws. To the extent that, for any Advance, the Fee or the Default Fee, each alone or together, constitutes an interest rate higher than permitted by applicable law, the Fee or Default Fee, as applicable, will be reduced to the highest rate permitted by applicable law.

1.10. **Xometry's Role.** Xometry is not a bank, payment institution, or money service business. Xometry is a supplier of the PO Advance Service under this Agreement.

**2. PARTNER REQUEST AND APPROVAL PROCESS; USE OF ADVANCES**

2.1. **Advance Request.** By checking “I Agree to the Terms and Conditions of this Agreement” or otherwise confirming acceptance of these Terms and Conditions, you submit your request to participate in the PO Advance Service and provide your acceptance of this Agreement, subject to Xometry’s acceptance of your participation in the PO Advance Service. Xometry will review your Account history and Account Information and may request (directly or through Stripe) additional information from you in connection with its review of your application (such additional information to be deemed additional Account Information). Xometry reserves the right to accept or reject Partner requests in its sole discretion. In addition to any other eligibility criteria that Xometry may consider, Xometry will only allow you to participate in the PO Advance Service if you are a limited partnership, limited liability company, corporation, or similar business entity formed and operating in the United States. Individuals and non-United States companies may not participate in the PO Advance Service. Xometry will notify you through the Xometry Pay message system whether you have been accepted into the PO Advance Service within a reasonable time after receipt of your request. This Agreement shall be deemed effective as between you and
Xometry automatically from and after the date on which Xometry notifies you of your acceptance into the PO Advance Service.

2.2. **Advance Limits.** Your ability to receive Advances may be subject to an Advance Limit, to be determined by Xometry in its sole discretion. The Advance Limit may be reduced (or increased) at any time by Xometry in its sole discretion and with or without Electronic Notice to you. Determination of the Advance Limit may be affected by several factors, including, without limitation, our assessment of the risk associated with your Account history, the Account Information you provide, our ability to verify your Account Information, and the requirements of applicable law.

2.3. **Use of Advances.** You agree that Advances shall only be used by you for commercial or business purposes, consistent with the Xometry Pay Terms and Conditions and this Agreement, and not for any purposes prohibited by the Xometry Pay Terms and Conditions, this Agreement, or applicable law. Further, no Advance (or any part thereof) may be used for non-commercial, personal, family, household, or agricultural purposes. Specifically, you understand that your agreement not to use Advances for personal, family, household, or agricultural purposes means that important duties imposed upon Xometry, and important rights conferred upon a consumer, pursuant to certain federal or state laws, do not apply to the PO Advance Services or any Advance.

3. **REPRESENTATIONS, WARRANTIES, AND COVENANTS.** You hereby represent, warrant, and covenant the following:

3.1. You are a limited partnership, limited liability company, corporation, or similar business entity validly existing and in good standing in the state, located in the United States, of your incorporation or formation. You possess and are in compliance with all permits, licenses, approvals, consents and any other authorizations necessary to conduct your business as presently conducted and to own, operate, and lease your properties.

3.2. This Agreement has been duly authorized by all company action required for you to execute, deliver, and perform your obligations under this Agreement.

3.3. The execution of this Agreement and consummation of the transaction contemplated herein will not conflict with, (i) any and all applicable federal, state and local laws and regulations, (ii) any agreements to which you are a party, and (iii) your articles or certificate of incorporation or formation, bylaws, limited liability agreement, or other formation or organizational documents.

3.4. There is no action, suit, claim, investigation or legal, administrative, or arbitration proceeding pending or currently threatened whether at law or in equity or before any federal, state, local, foreign or other court, governmental department, commission, board, bureau, agency or instrumentality (collectively, "Governmental Authorities") against you which, if
adversely determined, would have a material adverse effect on your business or on our rights and remedies under this Agreement and the other Xometry Documents.

3.5. You are in compliance with all statutes, rules, regulations, orders or restrictions of all applicable governmental authorities.

3.6. Neither you nor any of your Authorized Users is currently, and neither you nor any of your Authorized Users will become, subject to a U.S. Office of Foreign Asset Control ("OFAC") list, or any law or other government agency list that prohibits or limits Xometry from providing the PO Service to you or from otherwise conducting business with you.

3.7. You shall not use the PO Advance Service or the funds from any Advance for non-commercial, personal, family, household, or agricultural purposes. You shall not use the PO Advance Service or the funds from any Advance to facilitate illegal transactions or otherwise in violation or potential violation of applicable law, regulation, rule, or legal interest, including, without limitation, to send or receive potentially fraudulent funds, or in the course of any activity regulated by the Financial Crimes Enforcement Network (FinCEN) or any other relevant regulatory body.

3.8. You agree to provide Xometry (including Stripe on Xometry's behalf), from time to time with such additional Account Information as may be requested in connection with your participation in the PO Advance Service program, including, without limitation, transaction files, financial statements, other information about your financial condition and operations, and any other information related to past volumes, non-Xometry sales, including third-party or marketplace sales, or the transactions contemplated by this Agreement, whether formed for the purpose of audit or otherwise. You agree to promptly update Xometry with respect to any changed Account Information. You consent to Xometry's sharing all of your Account Information with Stripe. **You hereby agree to indemnify and hold harmless Xometry if Xometry delivers Advances into a bank account not belonging to you, in the event that either (i) you have provided Xometry (including through Stripe) with incorrect bank account information, or (ii) a fraudulent transfer or theft of such funds occurs, whether or not through the hacking of any electronic systems involved in the applicable fund transfer.**

3.9. The jobs for which each Accepted PO is issued represent **bona fide** transactions in the ordinary course of your business.

3.10. During the term of this Agreement, you agree to cooperate fully with Xometry to take all necessary actions required to effectuate each of your obligations hereunder, including but not limited to promptly signing any and all documents Xometry deems reasonably necessary or appropriate.
4. EVENTS OF DEFAULT

4.1. Events of Default. You will be in default (an “Event of Default”) under this Agreement:

(a) If a Non-payment Default occurs;
(b) If you breach any of your representations, warranties or covenants under this Agreement;
(c) If You fail to maintain your Account during any period in which any portion of an Approved Advance Amount or Default Payment Amount remains unpaid to Xometry;
(d) (i) If you commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to you, or seeking to adjudicate you bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to you or your debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for you or for all or any substantial part of your assets, or you make a general assignment for the benefit of your creditors; (ii) if there is commenced against you any case, proceeding or other action of a nature referred above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undischmissed, undischarged or unbonded for a period of sixty (60) days; (iii) if there is commenced against you any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of your assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; (iv) if you take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) if you generally are not, or will be unable to, or admit in writing your, pay your debts as they become due;
(e) If You attempt to terminate this Agreement while any portion of an Approved Advance Amount or Default Payment Amount remains unpaid to Xometry;
(f) If you add an automated sweep function or automated settlement withdrawal to your Bank Account; or
(g) If Xometry’s prospects of repayment under this Agreement are, in Xometry’s reasonable judgment, in any way prejudiced, impaired or rendered insecure, or if a material adverse effect on your business or Xometry’s rights and remedies under this Agreement and the other Xometry Documents occurs.

4.2. Consequences of Events of Default. If an Event of Default occurs, in addition to Xometry’s other rights and remedies under applicable law and otherwise this Agreement, Xometry, in its
sole discretion, may refuse to consider any further Advance Requests and/or to unilaterally terminate this Agreement, provided that any such termination shall not terminate, waive, limit, or forgive your obligation to pay to Xometry the unpaid portions of any Approved Advance Amounts and Default Payment Amounts under your Account. This may happen without any prior notice to you. In addition, if an Event of Default occurs, all Approved Advance Amounts and Default Payment Amounts under your Account shall become due and payable immediately, at our option (subject to any applicable law to the contrary), and you agree to pay Xometry any and all damages Xometry incurs, including, without limitation, reasonable attorney’s fees and court costs if permitted by applicable law, in any way relating to your Account, and agree to hold the Xometry harmless from any liability it may have to any other person(s) or entities as a result of the Event of Default. Pending repayment of any amounts due to Xometry hereunder, all other provisions of this Agreement will continue to apply and your obligations herein shall survive termination of the Agreement.

5. LIMITATION OF LIABILITY

IN NO EVENT SHALL XOMETRY OR ANY OTHER XOMETRY PARTY (AS DEFINED BELOW) BE LIABLE FOR LOST PROFITS (WHETHER THEY ARE DIRECT OR CONSEQUENTIAL DAMAGES) OR ANY SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING BANK FEES OR CHARGES, LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, COST OF SUBSTITUTE SERVICES, OR OTHER ECONOMIC LOSS, WHETHER OR NOT XOMETRY OR SUCH XOMETRY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER ANY CLAIM FOR RECOVERY IS BASED ON THEORIES OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH OUR SERVICES, AND/OR THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE).

6. DISCLAIMER OF WARRANTIES

THE XOMETRY PARTIES EACH PROVIDE THE PO ADVANCE SERVICE “AS IS” AND WITHOUT ANY REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY. THE XOMETRY PARTIES EACH SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NONE OF THE XOMETRY PARTIES ARE RESPONSIBLE FOR YOUR FAILURE TO PERFORM OBLIGATIONS UNDER THE AGREEMENT AND DO NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY YOU, XOMETRY, OR ANY THIRD PARTY.
7. INDEMNIFICATION

You shall indemnify and hold Xometry and each of our affiliates, and any of our respective officers, directors, employees, counsel, agents, representatives, controlling persons and attorneys-in-fact (collectively, the “Xometry Parties”) harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses and disbursements (including attorneys’ fees) of any kind or nature whatsoever which may at any time (including at any time following repayment of any Advances) be imposed on, incurred by or asserted against any such Xometry Party in any way relating to or arising out of this Agreement, any document contemplated hereby or referred to herein, or the transactions contemplated hereby or entered into by the parties hereto, or any action taken or omitted by any such Xometry Party under or in connection with any of the foregoing; and the foregoing indemnity shall apply to any investigation, litigation or proceeding (including any insolvency proceeding or appellate proceeding) related to or arising out of this Agreement, whether or not any Xometry Party is a party thereto (all the foregoing, collectively, the “Indemnified Liabilities”). The Indemnified Liabilities shall include all negligent acts and omissions of each Xometry Party; provided, that, notwithstanding anything to the contrary in the foregoing, you shall not have any obligation hereunder to any Xometry Party for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused (as determined by a final judgment in a court of competent jurisdiction) by the willful misconduct or gross negligence of the Xometry Party seeking indemnification. You hereby release the Xometry Parties from any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the negligence of any such Xometry Party. The obligations under this Section 8 are all payable promptly following written demand, and shall survive satisfaction of all other Secured Obligations, and the termination, release or expiration of this Agreement and the documents executed in connection herewith.

8. LIMITATIONS PERIOD.

YOU AND XOMETRY AGREE THAT ANY CAUSE OF ACTION THAT YOU MAY HAVE AGAINST XOMETRY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY ADVANCE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES AND THAT, OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

9. ARBITRATION AGREEMENT; CLASS WAIVER; WAIVER OF TRIAL BY JURY. Please read this Section 9 (“Arbitration Agreement”) carefully. It is part of Your contract with Xometry and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.

9.1. 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 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.

9.2. **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 thirty (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.

9.3. **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, 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 a three, neutral arbitrators. 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.

9.4. **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.
9.5. **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.

9.6. **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.

9.7. **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.

9.8. **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 PARTNER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER PARTNER. 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 10.

9.9. **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.
9.10. **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.

9.11. **Survival of Agreement.** This Arbitration Agreement will survive the termination of your relationship with Xometry.

9.12. **Emergency Equitable Relief.** Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court located within Montgomery County, Maryland 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.

10. **GOVERNING LAW AND FORUM.**

This Agreement and any action related thereto will be governed and interpreted exclusively by and under the substantive and procedural laws of the State of Maryland, consistent with the Federal Arbitration Act, without giving effect to any principle or rule of law that provides for the application of the law of another jurisdiction, including any jurisdiction's law of conflicts. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. In any circumstances where the foregoing Agreement permits the parties to litigate in court, any and all suits must be filed in state or federal courts located within Montgomery County, Maryland.

11. **GENERAL**

11.1. **Complete Agreement and Survival.** This Agreement together with the Xometry Pay Terms and Conditions, the Partner Terms, any other Xometry documents, policies and/or agreements referenced herein, and all Proposals for which you provide an Acceptance consistent with the terms of this Agreement, sets forth the entire understanding between you and Xometry with respect to the PO Advance Service. The following sections of this Agreement and all other terms which by their nature should survive, will survive the termination of this Agreement: 1.4-1.6, 4 (Events of Default), 5 (Limitation of Liability), 6 (Disclaimer of Warranties), 7 (Indemnification), 8 (Limitations Period), 9 (Arbitration Agreement; Class Waiver; Waiver of Trial by Jury), 10 (Governing Law and Forum), and 11 (General). If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced.

11.2. **Amendments.** Xometry may modify this Agreement at any time and in its sole discretion by updating this posting at the Xometry website located at [www.xometry.com/legal](http://www.xometry.com/legal). The revised version will be effective at the time we post it, provided that the version in effect at the time of any applicable Proposal made by Xometry will continue to apply such Proposal and all Approved Advance Amounts made thereunder. You will be notified of any changes to this Agreement in the
manner required by applicable law prior to the effective date of the change; provided, however, that if the change is made for security purposes, we can implement such change without prior notice. We may suspend this Agreement or the PO Advance Service at any time. Your continued use of the PO Advance Service for any fifteen (15) calendar days (that need not be consecutive) after a modification signifies your agreement to the modification; provided, that, if you do not agree with any such change, you may terminate this Agreement upon written notice, with immediate effect, to Xometry. Your termination of this Agreement will not affect any of our or Stripe's rights or your obligations arising under this Agreement prior to termination. If you have any questions about this Agreement, or desire to terminate this Agreement as set forth in this Section 11, please contact us at: info@xometry.com.

11.3. **Force Majeure.** Xometry shall not be liable for any issues or delayed performance caused by circumstances beyond Xometry's reasonable control, including without limitation, acts of God, acts of government, changes in applicable law, pandemic, floods, fires, pandemics, epidemics, power failures, earthquakes, civil or military disturbances, acts of terror, strikes or other labor problems, computer failure and any such circumstances beyond Xometry's reasonable control as may cause interruption, loss or malfunction of utility, transportation, computer (hardware or software) or telephone communication service, and service provider failures or delays.

11.4. **Assignment.** You may not transfer or assign any rights or obligations you have under this Agreement without Xometry's prior written consent, and any purported transfer or assignment in violation of this Section 11.4 shall be null and void as if never undertaken. Xometry reserves the right to transfer or assign this Agreement or any right or obligation under this Agreement, in whole or in part, at any time to any person, with or without prior notice to you.

11.5. **Confidentiality; No Public Announcements.** The parties hereto agree that each shall treat confidentially the terms and conditions of this Agreement and all information provided by each party to the other regarding its business and operations. All confidential information provided by a party hereto shall be used by any other party hereto solely for the purpose of rendering or obtaining services pursuant to this Agreement and, except as may be required by applicable law or in carrying out this Agreement, shall not be disclosed to any third party without the prior consent of such providing party. The foregoing shall not be applicable to any information that is publicly available when provided or thereafter becomes publicly available other than through a breach of this Agreement, or that is required to be disclosed to a governmental authority by judicial or administrative process or otherwise by applicable law. No public release or statement concerning the subject matter of this Agreement shall be made by either party without the express written consent and approval of the other party.

11.6. **Severability.** If any provision of this Agreement is held to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision.
to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect.

11.7. **No Waiver.** If Xometry fails or delays in exercising any right, power or remedy or to take action against any breaches of this Agreement, it does not mean that it waives its right at a later time to enforce the same. Without limiting the foregoing, Xometry may, at our option accept partial payments without notifying you and without releasing you from your obligation to pay all amounts owing under this Agreement in full, or to otherwise perform the terms and conditions of this Agreement. You understand and agree that your obligation to pay all amounts owing under this Agreement and otherwise to perform the terms and conditions of this Agreement are absolute and unconditional.

11.8. **Electronic Signatures and Communications.** Each party agrees that the electronic signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including via email and the Shop Finances messaging system. Further, you consent and agree that:

   (a) Xometry can provide all information and disclosures required by law to you electronically.
   (b) Your electronic signature on the Agreement and related documents has the same effect as if you signed them in ink.
   (c) You are requesting Advances electronically at a website or mobile application operated by or on behalf of Xometry for that purpose, and your use of that website or mobile application to obtain a loan is your electronic signature and will have the same effect as if you signed the request for a loan in ink.
   (d) Xometry can send important communications and disclosures to you electronically via a website, a mobile application, or the Shop Finances messaging system or to the email address that you have provided to Xometry for that purpose (communication by any such method is referred to herein as “Electronic Notice”).

You may not withdraw any such agreement or consent, including to receipt of electronic communications, at any time on which you have any Approved Advance Amount or Default Payment Amount outstanding.

11.9. **Contacting Xometry.** Unless otherwise stated in this Agreement, notices, inquiries, and requests to Xometry should be emailed to info@xometry.com. Please note that email communications sent to Xometry for Account-related matters must come from the email address listed in your Account. Account-related communications initiated via other channels may require identity verification in order to obtain information or change settings.