

# Partner Terms and Conditions

## Xometry, Inc.

### **PARTNER MANUFACTURING SERVICES AGREEMENT**

**LAST UPDATED: 3/6/2019**

This Manufacturing Services Agreement (the “**Agreement**”) is made and entered into between Xometry, Inc. (“**Xometry**”) and you (“**You**” and “**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**”), CLICKING ON THE “I ACCEPT” BUTTON, OR COMPLETING THE REGISTRATION PROCESS YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTOOD AND AGREED 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 COMPANY YOU HAVE NAMED AS THE USER, AND TO BIND THAT COMPANY TO THIS AGREEMENT. THE TERM “**YOU**” REFERS TO THE INDIVIDUAL OR LEGAL ENTITY, AS APPLICABLE, IDENTIFIED AS THE USER WHEN YOU REGISTERED ON THE WEBSITE. **IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT PARTICIPATE IN XOMETRY’S PARTNER MANUFACTURING PROGRAM AS DESCRIBED BELOW.** Xometry’s General Terms and Conditions available at: [www.xometry.com/terms](http://www.xometry.com/terms) (“**General Terms**”) are incorporated herein by reference. In the event of any conflict between the terms of this Agreement and the General Terms, the terms of this Agreement shall supersede and control to the extent of any such conflict.

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 participants in the Program (as defined below) 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 participation in the Program 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 participating in the Program. Otherwise, Your continued use of the Website and/or participation in the Program shall be deemed Your conclusive acceptance of the modified terms and conditions.

**1. VENDOR MANUFACTURING PROGRAM.** 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 (each, a “**Manufacturing Project**”). In order to offer its customers greater efficiencies and the best pricing and quality of manufacturing services, Xometry maintains a partner manufacturing program consisting of a network of third party manufacturers capable of performing manufacturing services on Xometry’s behalf (the “**Program**”). As a participant in the Program, You will have the right to receive work orders from Xometry, from time to time, for the manufacture of certain Manufacturing Projects (each, a “**Work Order**”). Each Work Order will identify: (a) shipping terms; (b) delivery location; (c) delivery date(s); (d) the parts, assemblies and items to be delivered (each, a “**Part**”); (e) the 3D model and other written and specifications related to the Part that have been agreed to by the Customer (as defined below) and Xometry (the “**Specifications**”); and (f) compensation to be paid to You. If You indicate Your willingness to accept and are awarded with the Work Order, You will be deemed a “**Partner**” for the purposes herein, and will perform the work specified in the Work Order in accordance with the terms herein, including Section 3.

**2. PROGRAM REGISTRATION.** In order to participate in the Program, You may be required to register for an account on the Website (“**Account**”). In registering for the Program, You agree to (1) provide true, accurate, current and complete information about Yourself and Your manufacturing capabilities as prompted by the Websites’ registration form (the “**Registration Data**”); and (2) maintain and promptly update the 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 Program (or any portion thereof).

### **3. MANUFACTURE OF PARTS**

**3.1 Manufacture and Delivery.** Partner agrees to perform the work specified in the Work Order pursuant to the terms therein and this Agreement, including manufacturing, testing, calibrating, inspecting, handling, identifying and otherwise producing the Part(s) in accordance with the Specifications and for the price(s) provided by Partner in its quote for the manufacture and delivery of such Part(s). If tolerances are not specified in the Work Order, then Partner agrees to manufacture Part(s) to the Xometry manufacturing standards which are available at [www.xometry.com/manufacturing-standards](http://www.xometry.com/manufacturing-standards) (“**Manufacturing Standards**”) (which are incorporated herein by reference).

You represent, warrant and covenant that: (i) You have a suitable quality management system in place (refer to Partner Guide); (ii) use measures to prevent foreign object damage; (iii) ensure that you and any approved subcontractors do not, use any illegal or counterfeit parts, processes, products, materials, goods or supplies in connection with the manufacture of any Parts; and (iv) You will ensure that Your personnel are aware of their contribution to Part

conformity, product safety and that such personnel are at all times working in a manner that is safe and ethical; (v) You will notify Xometry of any changes in processes, products or services, subcontractor or location; (vi) You will immediately notify Xometry in writing in the event of any non-compliance with the terms of the Work Order and/or these Terms and Conditions

Except with respect to finishing processes (e.g. painting, plating, etc.), Partner shall not subcontract or delegate any of its obligations hereunder without the prior written consent of Xometry. You are solely responsible for any subcontractors, service providers, suppliers, licensors and/or manufacturers (collectively, "Subcontractors") you engage to manufacture, calibrate, test and otherwise produce any Part, and will indemnify Xometry for any damages, liabilities, losses, judgments, penalties, settlements, costs and expenses, incurred by Xometry or its customers as a result of any acts or omissions of such Subcontractors. If required by Xometry or the applicable customer, you will solely use those Subcontractors designated by Xometry and/or the applicable customer. You will ensure that all Subcontractors comply with these Terms and Conditions (flow-down), and will immediately notify Xometry of violation of such terms and conditions by a Subcontractor.

All Parts shall be delivered FCA (Incoterms 2010) to the destination designated in the Work Order, or other place of shipment as specified by Xometry, and will be packaged in an adequate manner to protect and preserve the Part. All shipment of Parts shall be with an Xometry approved carrier and with adequate liability and replacement insurance coverage. Unless otherwise stated in the Work Order, all customs, duties, costs, taxes, insurance premiums, and other expenses relating to such transportation and delivery shall be at Partner's expense. Title to the Parts furnished by Partner shall vest in Xometry or the customer who submitted the Work Order (the "**Customer**"), as applicable, when Parts are inspected and accepted by Xometry or the Customer, as applicable, pursuant to this Agreement.

**3.2 Testing and Acceptance of Parts.** The Parts made in accordance with this Agreement are subject to an acceptance test by Xometry and/or the applicable Customer (such party performing the testing, the "**Examiner**") before acceptance. The Examiner may, in its sole discretion, reject any portion of any shipment of Part which is not conforming with the Specifications. In order to reject a shipment or Part, the Examiner must give notice to its intent to reject the shipment within twenty (20) business days of the Examiner's receipt of the shipment. After notice of intent to reject is given, Xometry will cooperate with Partner in determining whether rejection is necessary or justified. If no such notice of intent to reject is timely received, the Examiner shall be deemed to have accepted such Part ("**Accepted**"). In the event a Part or shipment is properly rejected in accordance with the terms herein, Partner agrees to promptly, on receipt of notice of rejection, use best efforts to provide replacement Parts, at Partner's sole cost and expense. The testing and examination process shall resume as set forth above, with the Examiner having an additional twenty business day testing period. If the Examiner determines that the Parts, as revised, still do not comply with the Specifications, the Examiner may either (a) afford Partner the opportunity to repeat the correction and modification as set forth above at no additional cost or charge to the Xometry or the applicable Customer, (b) Xometry may itself correct the Part(s) (or engage a third party to do so) and may deduct the costs and reasonable expenses associated with such correction from the fees owed

to Partner; or (c) cancel the Work Order without payment of any fees, costs or expenses to Partner.

You will maintain, for a period required by applicable law, or if no such period is applicable, for a period of at least five (5) years after the manufacture of a Part in accordance with applicable Quality Standard(s), complete and accurate books and records related to the manufacture, inspection, validity of inspection equipment, test, rework, repair, identification, traceability, and subcontract for the product or service supporting your compliance with such Quality Standard(s), including books and records related to any retention periods and disposition requirements related thereto. Upon request, you will permit Xometry, the applicable customer, and regulatory authorities to inspect such books and records, as well as the areas of your facilities applicable to the manufacture such Parts, to confirm your compliance with these Terms and Conditions during normal business hours.

**3.3 Compliance with Laws.** Partner shall comply, at its sole cost and expense, with all applicable statutes, regulations, rules, ordinances, codes and standards (collectively, "Laws") governing the manufacture, assembly, transportation, import, export, or sale of Parts. Without limiting the foregoing, in the U.S., this includes all applicable commerce, transportation, environmental, occupational safety, securities, and employment and labor Laws. Partner is hereby on notice that data provided by Xometry or Xometry customers may be subject to the International Traffic in Arms Regulations ("ITAR") or the U.S. Export Administration Regulations ("EAR"). Partner agrees that neither it nor any of its personnel will export or re-export any ITAR- or EAR-controlled data or items without obtaining any required U.S. Government authorization. Partner further agrees that Xometry and Xometry's customers' data shall only be accessible by U.S. citizens and permanent residents and that it shall not release, export, or reexport such data to anyone other than U.S. citizens or permanent residents unless specifically authorized by the Xometry in writing. Partner shall maintain appropriate procedures to: (1) detect (a) the unauthorized access to or release of data to non-U.S. citizens or permanent residents, and (b) the export or transfer of data from, or storage of data outside of, the U.S., and (2) obtain and maintain any registration, license, agreement, or other authorization required under the ITAR or EAR. Partner shall promptly notify Xometry of any actual or suspected violation, and Xometry may immediately suspend Partner in the event of a violation. Partner shall secure binding obligations from any independent contractors or other parties who have access to Xometry or Xometry's customers' data or otherwise are performing services or activities in connection with this Agreement to comply with the terms of this Agreement.

**3.4 Contact with Customers.** Partner acknowledges and agrees that Customer satisfaction is extremely important to Xometry, and that in order to ensure such satisfaction, Xometry requires that all communications that take place with respect to any Customer's Work Order, must take place on or via the Website. As such, Partner covenants and agrees that all contact and communications with a Customer related in any way to any Work Order, shall be conducted exclusively via the Website. Partner further acknowledges that Xometry may monitor such contact and communications at any time without notice for the purpose of providing the Website and related services.

## 4. FEES AND PAYMENTS

**4.1 Fees and Payment.** Subject to the terms herein, Xometry will pay Partner, as its sole compensation hereunder for the performance hereunder, including the manufacture and delivery of the Parts, the fees set forth in the applicable Work Order within thirty (30) days after the Part(s) have been Accepted. Partner will be responsible for all costs and expenses associated with any Manufacturing Project, including the manufacture of the Part(s).

**4.2 Taxes.** All applicable taxes, including, but not limited to, sales/use taxes and other charges, such as duties, customs, tariffs, imposts and government imposed surcharges, shall be the responsibility of Partner, and Partner shall remit all such taxes and/or charges to the appropriate tax authority.

**4.3 No Expectation of Work Orders.** YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE NOT RECEIVED ANY ASSURANCE THAT YOU WILL OBTAIN ANY PARTICULAR NUMBER OF WORK ORDERS OR AMOUNTS AS A RESULT OF THIS AGREEMENT OR YOUR PARTICIPATION IN THE PROGRAM. XOMETRY WILL INCUR NO LIABILITY WHATSOEVER FOR ANY DAMAGES, LOSSES OR EXPENSES OF ANY KIND SUFFERED OR INCURRED BY YOU ARISING FROM OR INCIDENT TO YOUR PARTICIPATION IN THE PROGRAM, OR ANY TERMINATION OF THIS AGREEMENT BY XOMETRY, WHETHER XOMETRY IS AWARE OF SUCH DAMAGES, LOSSES OR EXPENSES.

## 5. INTELLECTUAL PROPERTY

**5.1 Xometry Ownership.** As between Xometry and You, Xometry's pricing algorithms, processes and mechanisms, the Website, and all content therein (collectively, the "**Xometry Properties**") and all worldwide intellectual property rights in each of the foregoing, are the exclusive property of Xometry and its licensors. All rights in and to Xometry Properties not expressly granted to You in this Agreement are reserved by Xometry and its licensors. Except as expressly set forth herein, no express or implied license or right of any kind is granted to You regarding Xometry Properties or any part thereof, including any right to obtain possession of any source code, data or other technical material related to the Software.

**5.2 3D Models.** The 3D models, drawings, and specifications provided within the Work Order are the exclusive property of Xometry or the Customer of Xometry. Partner is hereby granted a non-exclusive, non-transferable, non-sublicensable, limited license to use, the 3D models, drawings, and specifications and any other that is provided for the sole purpose of performing its obligations hereunder. Partner agrees that within 18 months upon the completion of its obligations for any Work Order, or upon request from Xometry, it will return or destroy the 3D models, drawings, and specifications for such Work Order. Partner further understands and agrees that the 3D models, drawings, and specifications and other information provided are the confidential and proprietary information of Xometry or the applicable Customer, and will not disclose the such models or information to any third party, without the prior written consent of

Xometry or the applicable Customer; *provided, that*, Partner may disclose such models and information to its employees who have a need to know and who are bound by confidentiality obligations no less restrictive than those contained herein.

**5.3 Partner Information.** To the extent You upload any information, content, data or other materials to the Xometry Partner, You hereby grants Xometry a perpetual, irrevocable, royalty-free, fully paid-up, non-exclusive license to reproduce and use such information, content, data and materials for the purpose of providing the Xometry Properties to You, other Partners and our Customers; *provided that*, Xometry may use such information, content, data and materials on an aggregated and anonymized basis to provide, improve and market the Xometry Properties.

**5.4 Trade Secrets.** You acknowledge and agree that Xometry's pricing and matching algorithms, processes and mechanisms, along with Xometry's geometry parsing engine are the trade secrets of Xometry. Accordingly, You shall not, and shall not encourage or assist any third party in, reverse engineering any of such algorithms, processes, mechanisms, or engines, and that Xometry will suffer irreparable harm in the event of any breach by your of the foregoing. In the event you breach or attempt to breach this Section, Your right to participate in the Program will immediately cease, and Xometry will take any action it deems necessary or appropriate to protect its rights and interests.

## **6. WARRANTIES AND DISCLAIMERS**

**6.1 By Partner.** Partner represents and warrants that (a) Partner has the authority to enter into this Agreement personally (if Partner is a natural person), or on behalf of the entity entering into this Agreement, and to bind that entity; (b) title to the Parts shipped or sold to Xometry or the applicable Customer pursuant to this Agreement will pass to Xometry or the Customer, as applicable, free and clear of all liens, charges, encumbrances, restrictions or other third party rights; (c) Parts shipped under Work Orders pursuant to this Agreement will be manufactured from new and unused components; (d) the Parts will comply with the Specifications and be free from defects in material and workmanship at the time of delivery to Xometry or the Customer, as applicable; and (e) Partner will comply laws, rules, regulations and industry standards applicable to its manufacture and delivery of Part(s) to which Partner is bound.

**6.2 Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WEBSITE IS PROVIDED "AS IS," AND XOMETRY MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE WEBSITE (IN WHOLE OR IN PART) OR ANY OTHER PARTS OR SERVICES PROVIDED TO YOU BY XOMETRY. XOMETRY DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE WEBSITE SHALL BE UNINTERRUPTED, SECURE, OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO



NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

**7. INDEMNIFICATION.** You will indemnify, defend, and hold harmless Xometry, its parents, subsidiaries, affiliates, officers, employees, agents, partners and licensors (collectively, the “**Xometry Parties**”) against any and all costs, expenses (including reasonable attorneys’ fees), losses, damages, claims, liabilities, demands, penalties, forfeitures, suits and judgments, which the Xometry Parties may hereafter incur, become responsible for or pay, as a result of (a) Your breach or other violation of this Agreement, including without limitation, of the Manufacturing Standards; (b) Your negligent or willful acts, errors or omissions; or (c) any death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment and any clean up costs in connection therewith. Xometry reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by You, in which event You will fully cooperate with Xometry in asserting any available defenses. You agree that the provisions in this section will survive any termination of Your Account, this Agreement or Your access to the Xometry Properties.

## **8. LIMITATION OF LIABILITY**

**8.1 Disclaimer of Certain Damages.** THE PARTIES UNDERSTAND AND AGREE THAT IN NO EVENT SHALL XOMETRY BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE XOMETRY PROPERTIES, 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 THIS AGREEMENT.

**8.2 Cap on Liability.** EXCLUDING YOUR INDEMNIFICATION OBLIGATIONS, UNDER NO CIRCUMSTANCES WILL THE XOMETRY PARTIES BE LIABLE TO YOU FOR MORE THAN THE AMOUNT RECEIVED BY THE XOMETRY AS A RESULT OF YOUR USE OF THE XOMETRY PROPERTIES IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT(S) GIVING RISE TO LIABILITY HEREUNDER.

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

## **9. TERMS AND TERMINATION**

**9.1 Term.** This Agreement commence on the date when You accept it (as described in the preamble above) and remain in full force and effect while You use the Xometry Properties, unless terminated earlier in accordance with this Agreement.

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

**9.3 Termination of Agreement by Xometry.** Xometry has the right to, immediately and without notice, suspend or terminate this Agreement or Your use or participation in the Website, Program and any services provided thereunder at any time (with or without cause), including if You have materially breached any provision of this Agreement, or if Xometry is required to do so by law (e.g., where the provision of the Website, or the Program is, or becomes, unlawful). You agree that all terminations for cause shall be made in Xometry's sole discretion and that Xometry shall not be liable to You or any third party for any termination of Your Account. 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.

**9.4 Effect of Termination.** Termination of this Agreement includes deletion of Your password and all related information, files and content associated with or inside Your Account (or any part thereof). Upon termination of this Agreement, Your right to use the Website and participate in the Program will automatically terminate immediately. All provisions of this Agreement which by their nature should survive, shall survive termination of this Agreement, including without limitation, ownership provisions, warranty disclaimers, and limitation of liability.

**10. INSURANCE.** Without limiting or qualifying Your liabilities, obligations or indemnities otherwise assumed by You pursuant to this Agreement, You shall maintain appropriate insurance policies, at Your sole cost and expense, in amounts adequate to cover Your obligations and responsibilities under this Agreement. Xometry will be named as an additional insured on all such policies and will receive 30 days written notice prior to the termination, reduction or modification of coverage with respect to any such insurance policy. Upon Xometry's request, You will promptly furnish to Xometry written evidence of Your insurance coverage.

## **11. GENERAL PROVISIONS**



**11.1 Electronic Communications.** The communications between You and Xometry use electronic means, whether You visit the Xometry Properties or send Xometry e-mails, or whether Xometry posts notices on the Xometry Properties 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.

**11.2 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.

**11.3 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.

**11.4 Questions, Complaints, Claims.** If You have any questions, complaints or claims with respect to the Xometry Properties, please contact us at: [info@xometry.com](mailto: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.

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

**11.6 Arbitration Agreement; Class Waiver; Waiver of Trial by Jury.** Please read this Section 11.6 ("**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.

**(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](mailto: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](http://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.

**(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 11.6(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.

**11.7 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.

**11.8 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.

**11.9 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 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.

**11.10 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.

**11.11 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.

**11.12 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 Manufacturing Standards, the General Terms, or any Work Order, the order of precedence is as follows: (i) the Manufacturing Standards; (ii) this Agreement; (iii) the General Terms; and (iv) the Work Order. Unless otherwise specifically agreed, 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.