

# **Desktop Metal Operating, Inc.**

## **Master Terms and Conditions of Sale**

1. **Statement of Purpose.** These Master Terms and Conditions of Sale (the “**Agreement**”) govern the sale and provision by Desktop Metal, and purchase and use by Buyer, of Desktop Metal Products, Consumables, Software, and/or Services. For purposes of this Agreement, (i) “Desktop Metal” shall mean Desktop Metal Operating, Inc. or its Affiliate, in each case, named on the relevant Order and (ii) “**Buyer**” shall mean the entity named on the relevant Order as the purchaser. Each of Desktop Metal and Buyer are referred to herein as a “**Party**” and, collectively, as the “**Parties**.” This Agreement consists of, collectively, these Master Terms and Conditions of Sale, any applicable Order(s) and the Policies. In the event of any conflict between the terms and conditions set forth in this Agreement and those set forth in an Order, the terms and conditions of this Agreement shall take precedence unless the terms of the applicable Order expressly and specifically (i.e. by reference to the Parties, Effective Date, etc. of this Agreement) supersede the terms of this Agreement; for the avoidance of doubt, a general integration clause that purports to “supersede all other agreements on the subject matter” will not operate to supersede this Agreement.

### **2. Definitions:**

“**Affiliate**” means any entity that controls, is controlled by, or is under common control with the applicable Party. For purposes of this Agreement, “control” means possessing, (i) directly or indirectly, the power to direct or cause the direction of the management, policies or operations of an entity, whether through ownership of voting securities, by contract or otherwise; or (ii) the ownership of, or the power to vote, more than fifty percent (50%) of the voting stock, shares or interests of such entity.

“**Applicable Law**” means to the extent legally binding on either Party: all laws, statutes, acts, by-laws, rules, guidelines, policies, regulations, standards (including accreditation standards), requirements, memoranda, declarations, ordinances, decrees, orders, bulletins, guidance, codes or other binding restrictions of or by any regulatory authority, and including any requirements for permits, certificates, approvals or inspections, or any corrective action plans, directives, guidelines or orders, of or by any regulatory authority, all as may be enacted, reenacted, promulgated, issued, imposed, ordered, or amended from time to time.

“**Consumables**” means the following made available to Buyer for purchase from Desktop Metal: (i) any parts that are disposable and/or may be consumed or worn out during the operation of the Products, including without limitation printhead modules and wear and tear parts (“**Service Consumables**”), and (ii) materials consumed by the Products for production of the Buyer’s part, including without limitation Desktop Metal liquid binding agent, powders and resins (“**Materials Consumables**”).

“**Documentation**” means the user manuals, Specifications and other materials that describe the use and functionality of the Products and Software, which Desktop Metal makes generally available to its customers.

“**Intellectual Property Rights**” means current and future worldwide rights of a legal person or entity in, to or arising out of: (a) any United States, international or foreign patent or any application therefor, including any and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (b) invention (regardless of whether patentable in any country), invention disclosure, improvement, trade secret, proprietary information, know-how, technology or other technical data; (c) copyright, copyright registration, mask work, mask work registration trade secret, trademark, moral rights and other similar rights or any application for any of the foregoing in the United States or any foreign country, or any other rights corresponding to any of the foregoing throughout the world.

“**Order**” means the purchase order or other ordering document for the Products, Consumables, Software, and/or Services received and accepted by Desktop Metal that incorporates this Agreement by reference. In no event will an Order be deemed accepted until Desktop Metal provides written acknowledgement thereof and issues a sales order number; once accepted by Desktop Metal, an Order cannot be cancelled or modified by Buyer except as mutually agreed by the Parties in writing. Each Order will include, at a minimum, the applicable: (a) Buyer name and contact information; (b) Desktop Metal Products, Consumables, Software, and/or Services and associated quantity; (c) Fees for the applicable Desktop Metal Products, Consumables, Software, and/or Services; and (d) if applicable, the site designated by Buyer where Product is to be installed (“**Installation Site**”). For convenience, Buyer may use its

standard purchase order form to specify the items listed in clauses (a) – (d) above, provided that this Agreement will exclusively govern and control Buyer’s purchase of Products, Consumables, Software, and/or Services. Any additional or contradictory terms contained on Buyer’s purchase order form will be of no effect, and Desktop Metal hereby rejects all such terms, regardless of Desktop Metal’s acknowledgment or acceptance of such Order.

“**Policies**” means the policies and documents applicable to the Products, Consumables, Software, and/or Services, that are located at the following URL: <https://www.desktopmetal.com/customer-policies> (“**Policy Page**”).

“**Products**” means Desktop Metal’s 3D printing systems and related equipment set forth in the applicable Order.

“**Software**” means, as applicable, Desktop Metal’s software (excluding Firmware (as defined below)) provided in association with the Products or on a standalone basis.

“**Spare Parts**” means replacement parts for Products (excluding Service Consumables), which may be purchased by Buyer in accordance with the terms hereof or otherwise provided by Desktop Metal in connection with the Support Services (as defined below).

“**Specifications**” means the descriptions of the technical specifications and functionality of each Product as set forth on the applicable data sheet available on Desktop Metal’s website or upon request.

“**Support Services**” means the maintenance and support services that may be provided by Desktop Metal in accordance with the plan selected by Buyer on the applicable Order, the terms of which are set forth on the applicable section of the Policy Page for the relevant Product. Support Services may be provided directly by Desktop Metal or an Affiliate or a reseller, distributor or contractor engaged by Desktop Metal or an Affiliate, at Desktop Metal’s sole discretion.

### 3. SCOPE

#### 3.1 Products, Spare Parts and Consumables.

(a) This Agreement shall govern the purchase and sale of the Products, Spare Parts and Consumables and other related items listed on the applicable Order. To the extent a Consumable is available for purchase from Desktop Metal, unless otherwise communicated by Desktop Metal in writing, Buyer shall be required to purchase such Consumable from Desktop Metal.

(b) Subject to Buyer’s compliance with the terms and conditions of this Agreement, Desktop Metal grants to Buyer a nonexclusive, nontransferable license to use any firmware installed or embedded by Desktop Metal in the Products purchased by Buyer (“Firmware”), at no additional charge, provided that Buyer may only use such Firmware together with the specific Products purchased from Desktop Metal in which the Firmware is installed/embedded. Customer may not extract or copy Firmware embedded in Products for any reason.

**3.2 Software.** In the event Desktop Metal provides Buyer with Software in association with the Products or on a standalone basis, the use of the Software will be governed by the applicable Software end user license agreement set forth on the Policy Page or such other license terms as may be provided with the Software.

**3.3 Services.** From time to time, Desktop Metal shall provide services related to the Products (“**Services**”) as listed on the applicable Order, which Services shall be subject to, and performed in accordance with, this Agreement. Services may be provided directly by Desktop Metal or an Affiliate or a reseller, distributor or contractor engaged by Desktop Metal or an Affiliate, at Desktop Metal’s sole discretion.

**3.4 Modifications.** Desktop Metal may update the Policy Page, including the Support Services terms included thereon, from time to time; provided that any such update will not be designed to: (a) materially degrade the Policies or Support Services; or (b) add additional material obligations for Buyer. If Desktop Metal updates the Support Services terms in a manner that materially degrades Desktop Metal’s obligations thereunder or adds additional material obligations for Buyer, (i) such updates shall not apply to any then-current Support Services term running at the time of the update, and (ii) Desktop Metal will notify Buyer at the email address associated with the account.

Buyer may provide written notice within thirty (30) days of the applicable update of its election to terminate any outstanding Order(s) with respect to any Products, Spare Parts, Consumables, Software not yet delivered or Services not yet commenced. If Buyer does not so notify Desktop Metal, Buyer shall be deemed to have accepted said updates to the Policies or the Support Services.

**3.5 Restrictions on Use.** Buyer shall not, and shall not cause or permit its Affiliates or any other person or entity to: (a) modify, reverse engineer or otherwise attempt to discover any underlying Confidential Information of any of the Products, Spare Parts, Consumables, Software, or Services (other than to the extent Applicable Law permits such activity and prohibits such a restriction); (b) use any Products, Spare Parts, Consumables, Software, or Services in violation of Applicable Laws (including the manufacture of firearms (as defined in 27 CFR 478.11, Subpart B) without the necessary authorization from the relevant U.S. government or state agencies) or in a manner inconsistent with applicable Documentation; (c) make or permit use of any trademark, trade name, service mark, or other commercial symbol of Desktop Metal without its prior written consent; or (d) use the Products, Spare Parts, Consumables, Software, or Services directly or indirectly to provide any hosting, commercial time-sharing, or rental use, nor for any other service through which another person utilizes the Products, Spare Parts, Consumables, Software, or Service, unless approved by Desktop Metal in writing.

#### **4. PAYMENT TERMS**

**4.1 Fees.** Buyer shall pay the fees for the Products, Spare Parts, Consumables, Software, and/or Services specified in an applicable Order (“Fees”). Unless otherwise set forth in an applicable Order, the payment and invoice schedule shall be: (i) 30% of Fees invoiced at or after Order placement and due upon receipt, (ii) 60% of Fees invoiced and due prior to shipment, and (iii) 10% invoiced upon shipment and due within thirty (30) days of the date of the invoice. Buyer will pay Desktop Metal the Fees in the currency stated on the invoice. All Fees are exclusive of any (i) taxes, duties or other governmental charges or assessments on the sale, shipment or use of the Products, Spare Parts, Consumables, Software, or Services, or (ii) shipping fees. Fees are non-refundable except as set forth herein, or as required by Applicable Law. Fees and expenses not paid to Desktop Metal when due shall be subject to interest thereon at the rate of one and 50/100 percent (1.5%) per month, or the highest amount permitted by law, whichever is lower, from the date payment was due until such Fees, together with interest thereon, is paid in full. Further, in the event that any Fees or expenses are not timely paid by Buyer, Desktop Metal reserves the right to suspend all Services, including Support Services, until such amounts are paid in full. Desktop Metal shall use commercially reasonable efforts to notify Buyer in advance of such action. Buyer shall not set off against or deduct from any amounts due to Desktop Metal all or any part of any amounts owed or alleged to be owned by Desktop Metal to Buyer or any damages or losses which Buyer may have sustained or alleges to have sustained as a result of any breach or alleged breach by Desktop Metal of any obligation of any kind to Buyer.

**4.2 Taxes.** Buyer is responsible for all taxes (excluding any taxes imposed on Desktop Metal’s income), duties or other governmental charges or assessments on the sale, shipment or use of the Products, Spare Parts, Consumables, Software, or Services, including without limitation, any sales use, value-added, royalty or withholding taxed imposed by any U.S. or other government entity. Desktop Metal will charge taxes when required to do so. If Buyer provides Desktop Metal with a valid tax exemption certificate, Desktop Metal will not collect the taxes covered by that certificate.

#### **5. TITLE, RISK OF LOSS AND DELIVERY**

**5.1 Title and Risk of Loss.** Unless otherwise mutually agreed upon by the Parties in the applicable Order, Products, Spare Parts and Consumables shall be delivered Ex Works (Incoterms 2020) at Desktop Metal’s facility (i.e. an Order is considered shipped and delivered when made available to Buyer at Desktop Metal’s facility), whereupon title and risk of loss of Products, Spare Parts and Consumables shall then pass to Buyer. Desktop Metal reserves the right to charge Buyer storage fees if Products, Spare Parts and/or Consumables are not picked up within three (3) days of said delivery.

**5.2 Delivery.** Desktop Metal will use commercially reasonable efforts to deliver the Products, Spare Parts and/or Consumables on or before the scheduled delivery date set forth on the applicable Order; provided, that, Desktop Metal does not warrant quoted shipment or delivery dates or timeframes and may fulfill ordered Products, Spare Parts and/or Consumables by partial shipments, at its sole discretion. Buyer and Desktop Metal acknowledge and

agree that all delivery dates are estimates of the target dates for delivery of Products, Spare Parts and Consumables . If Desktop Metal cannot deliver the Products, Spare Parts and Consumables in the applicable Order by the scheduled delivery date, Desktop Metal will: (a) notify Buyer of the delay as soon as possible; and (b) deliver the Products, Spare Parts and Consumables as soon as practicable. However, Desktop Metal will not be liable for any damage or penalty for delay in delivery or for failure to give notice of delay. Buyer will have fourteen (14) days after receipt of Products, Spare Parts and Consumables to inspect the Products, Spare Parts and Consumables and notify Desktop Metal in writing of any non-conforming or damaged goods. Any failure by Buyer to examine the Products, Spare Parts or Consumables and notify Desktop Metal of any nonconformity or damage within such fourteen (14) day period shall constitute a waiver by Buyer of any claim or right of Buyer against Desktop Metal arising hereunder or under Applicable Law with respect to any nonconformity or damage that would have reasonably been discovered by such inspection. Desktop Metal will only accept returns from Buyer that are returned with a Return Material Authorization number issued by Desktop Metal and accompanied by a written notice specifying the nonconformity or damage.

## 6. INSTALLATION

Products, Spare Parts and Software that do not require installation by Desktop Metal may be installed by Buyer and used at any time following delivery. Desktop Metal will install those Products, Spare Parts and Software designated in the applicable Order as requiring installation by Desktop Metal (“**Desktop Metal Installed Products**”) at Buyer’s designated facility following receipt of all payments thereto pursuant to the applicable Order (installation may be provided directly by Desktop Metal or an Affiliate or a reseller, distributor or contractor engaged by Desktop Metal or an Affiliate, at Desktop Metal’s sole discretion). Prior to such installation, Buyer is responsible for completing all applicable site preparations for the Desktop Metal Installed Products as specified in the applicable Product Documentation and as required by Applicable Law, including, without limitation, all health and safety laws. Buyer shall provide Desktop Metal with unencumbered access to the Desktop Metal Installed Products and all associated computer systems as needed for the installation services, and Buyer shall cooperate with Desktop Metal with respect to providing any necessary support to Desktop Metal’s personnel for the installation of the Desktop Metal Installed Products. In addition to the Fees for installation services, if any, listed in the applicable Order, Buyer shall arrange for, and pay all expenses associated with, such site preparations, including, without limitation, all storage, drayage, cranes, building modifications or other similar charges. Buyer shall thereafter provide such other assistance, services and facilities as may be requested by Desktop Metal to complete such installation. Desktop Metal Installed Products shall not be handled, operated, opened, dismantled, or used at any time prior to completion of required installation thereof, and then, initially in the presence and under the supervision of authorized Desktop Metal technical personnel.

## 7. LIMITED WARRANTIES; DISCLAIMER

**7.1 Limited Warranty and Warranty Period.** Solely during the then-current standard limited Desktop Metal warranty period applicable to the Products, Spare Parts, Consumables, Software, and/or Services, which periods (if any) are expressly identified in the applicable warranty chart set forth on the Policy Page (the “**Warranty Chart**”) or, in the case of Consumables, on the label attached thereto (each such period, as applicable, a “**Warranty Period**”), Desktop Metal warrants as follows: (i) the Products (excluding the Software), Spare Parts and/or Consumables shall be free from defects in materials and workmanship; and (ii) the Services shall be performed in a professional and workmanlike manner. Unless otherwise stated in the Warranty Chart, the Warranty Period for the Products is as follows:

- Warranty Period is 12 months from installation, but no more than 13 months from shipment

Unless otherwise stated in the Warranty Chart, the Warranty Period for Consumables and Spare Parts is three (3) months from the date of shipment. Products, Spare Parts and Consumables shall be deemed to be free from defects if they meet, upon the passing of risk pursuant to Section 5.1, the Specifications or in Documentation.

**7.2 Warranty Remedies.** Buyer must provide written notice to Desktop Metal that a Product, Spare Part, Consumable or Service is not as warranted within the applicable Warranty Period pursuant to Section 7.1, or the right to assert such claim will be deemed waived. At its option and to the extent permitted by Applicable Law, if Desktop Metal confirms that the Product, Spare Part, Consumable or Service is not as warranted pursuant to Section 7.1, then Desktop Metal will at no charge, either: (i) repair or replace the Product, Spare Part or Consumable with functionally-equivalent new, previously opened, or refurbished parts and replacements or (ii) refund the price paid to

Desktop Metal for the original Product, Spare Part or Consumable. A repaired or replacement Product, Spare Part or Consumable is warranted for the remainder of the applicable Warranty Period of the original Product, Spare Part or Consumable or three (3) months from the date of replacement or repair, whichever provides longer coverage. The obligations hereunder are conditioned upon the return of the defective Product, Spare Part or Consumable in accordance with the Desktop Metal RMA policy, which is posted on the Policy Page. The replacement Product, Spare Part or Consumables becomes the property of the Buyer and the original Product, Spare Part or Consumable replaced and returned to Desktop Metal becomes the property of Desktop Metal. In the case of a breach of the applicable warranty pursuant to Section 7.1 with respect to the Services, Desktop Metal shall remedy such breach as (and if) expressly set forth in the Policies. The foregoing are Buyer's exclusive remedies and Desktop Metal's sole obligations with respect to a breach of the forgoing warranties.

**7.3 Warranty Exclusions.** Desktop Metal's limited warranty obligations as set forth in Section 7.1 do not apply and are void with respect to (a) cosmetic damage and normal wear and tear, (b) Products or Spare Parts that have been improperly installed (other than if installed by Desktop Metal or its authorized service technicians) or maintained, (c) costs of any Product or Spare Part installation or deinstallation, (d) products or consumables not manufactured, certified, approved for use, or supplied by Desktop Metal, (e) Products used with consumables other than those certified, manufactured or supplied by Desktop Metal, (f) failures or defects caused by misuse, abuse, accidents, physical damage, abnormal operation, improper handling and/or storage, neglect, exposure to fire, fluids, biological waste, hazardous materials, chemicals, excessive moisture or dampness, extreme changes in climate or temperature, spills of food or liquids, or alterations, (g) problems caused by the Buyer network, (h) a Force Majeure event, (i) Products operated outside of the intended or permitted use as detailed in the Specifications or applicable Documentation, (j) performance of Products in combination with other items not manufactured, approved in writing or supplied, by Desktop Metal ("**Third-Party Products**"); provided, that, such exclusion shall only apply to the extent that a Third-Party Product has caused a Product to not conform to the applicable warranty, (k) Products removed from the original Installation Site, unless otherwise expressly authorized by Desktop Metal in writing, or (l) any Product which has been repaired, modified or altered by anyone other than Desktop Metal or a Desktop Metal authorized service technician.

Any statement or estimate by Desktop Metal, or any of its agents, resellers or distributors, regarding production, capacity, performance, or consumable consumption of Products, Spare Parts, Consumables and/or Software are not representations or guarantees of such production, capacity or performance and Buyer is not entitled to rely upon said statements or estimates. Any such statements or estimates may be based upon past performance of similar Products, Spare Parts, Consumables and Software in conjunction with various applications under various conditions. The design and operation of any facility in which Customer utilizes or operates the Products, Spare Parts, Consumables and Software is not the responsibility of Desktop Metal and can have a material impact on the performance of the Products, Spare Parts, Consumables and Software. Additional variables that may have a material impact on the performance of the Products, Spare Parts, Consumables or Software include, but are not limited to, (i) the operation of the Products, Spare Parts, Consumables and Software, (ii) the environmental conditions in which the Products, Consumables and Software are operated, (iii) the type, age, and combination of Consumables, and (iv) the operational setting of the Products. Buyer is solely responsible for these variables.

EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN THIS SECTION 7, ALL EXPRESS, IMPLIED AND STATUTORY TERMS, CONDITIONS, REPRESENTATIONS, AND WARRANTIES (INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT) ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. THE LIMITED WARRANTY IS PROVIDED ON THE BASIS THAT THE BUYER IS PURCHASING THE PRODUCTS, SPARE PARTS, CONSUMABLES, SOFTWARE AND/OR SERVICES FOR THE PURPOSES OF A BUSINESS, AND NOT FOR HOUSEHOLD OR CONSUMER USE. IF ANY CONDITION OR WARRANTY IMPLIED BY LAW IN RELATION TO THE SALE OR SUPPLY OF GOODS CANNOT LAWFULLY BE EXCLUDED, RESTRICTED OR MODIFIED OR CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED EXCEPT TO A LIMITED EXTENT IS BREACHED, THEN, TO THE EXTENT PERMITTED BY APPLICABLE LAW, BUYER'S REMEDY IN RESPECT OF SUCH CONDITION OR WARRANTY IS LIMITED, AT DESKTOP METAL'S OPTION, TO THE SOLE AND EXCLUSIVE REMEDY STATED IN THE LIMITED WARRANTY CLAUSE ABOVE.

## 8. INDEMNIFICATION

8.1 **Desktop Metal Indemnification.** Desktop Metal will defend, indemnify and hold harmless Buyer and its employees, officers and directors against any liabilities, costs, expenses, claims, allegations, suit or proceeding suffered or incurred by Buyer to the extent arising out of or related to a third party claim that any of the Products, Spare Parts, Consumables, Software, or Services infringes the Intellectual Property Rights of such third party. If any Desktop Metal Product, Spare Part, Consumable, Software, or Service becomes, or in Desktop Metal's opinion is likely to become, the subject of an infringement claim, Desktop Metal may, at its option and expense: (a) procure for Buyer the right to continue use of the Desktop Metal Product, Spare Part, Consumable, Software, or Service; (b) modify the Desktop Metal Product, Spare Part, Consumable, Software, or Service so that it becomes non-infringing; or (c) if neither of the foregoing is deemed by Desktop Metal to be practicable, terminate the applicable Order (or relevant portion thereof) by written notice to Buyer and refund to Buyer any Fees paid by Buyer for the Desktop Metal Product, Spare Part, Consumable, Software, or Service, or, if and as applicable, prorated Fees for the amount of time remaining in the applicable term. Notwithstanding the foregoing, Desktop Metal will have no obligation with respect to any infringement claim to the extent based upon (i) any use of Desktop Metal Products, Spare Parts, Consumables, Software, or Services not in accordance with this Agreement or for purposes beyond the scope set forth in any applicable Documentation or written instructions, (ii) any use of any release of the Software other than the most current release made available to Buyer, (iii) any modification of Desktop Metal Products, Spare Parts, Consumables, Software, or Services by any person other than Desktop Metal or its authorized agents or subcontractors, (iv) any Work Product (as defined in Section 10.1), or (v) any combination or integration of Desktop Metal Products, Spare Part, Consumables, Software, or Services with products, software, data, materials, and/or technology not provided by Desktop Metal (collectively, the "Exclusions"). This Section states Desktop Metal's entire liability and Buyer's sole and exclusive remedy for infringement claims and actions.

8.2 **Buyer Indemnification.** Buyer shall defend, indemnify and hold harmless Desktop Metal and its Affiliates, and their employees, officers and directors against any liabilities, costs, expenses, claims, allegations, suit or proceeding suffered or incurred by Desktop Metal to the extent arising out of or relating to a third party claim with respect to (i) the Exclusions, (ii) Buyer's use of the Products, Software, Spare Parts and Consumables contrary to the terms hereof or applicable law, (iii) products or parts printed by Buyer using the Products, (iv) Buyer's use of the Products, Software, Spare Parts or Consumables to manufacture firearms. Buyer shall not settle any claim or enter into any agreement that affects Desktop Metal's rights or interests without Desktop Metal's prior written consent. If Buyer does not diligently defend against such claim, suit or proceeding, Desktop Metal shall be entitled to obtain its own legal counsel to direct the defense thereof at Buyer's sole cost and expense.

8.3 **Conditions; Settlement.** An indemnifying party's obligations as set forth above are expressly conditioned upon each of the following: (a) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party will have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party will reasonably cooperate the indemnifying party, at the indemnifying party's expense, to facilitate the settlement or defense of any claim or suit. The indemnifying party may settle any claim or action without the indemnified party's consent so long as such settlement (A) makes no admission or acknowledgment of liability or culpability on the part of indemnified party, (B) includes a complete release of indemnified party, and (C) does not seek any relief against indemnified party other than the payment of money damages to be borne by the indemnifying party.

## 9. LIMITATION OF LIABILITY

9.1 **Disclaimer.** Except with respect to a breach of a party's confidentiality obligations hereunder or a misappropriation of the other party's Intellectual Property Rights, in no event shall either party be liable to the other or any third party for any consequential, indirect, exemplary, special or incidental damages, including any business interruption or loss of use, data, revenue, profits, or goodwill, arising from or relating to this Agreement. In addition, notwithstanding anything herein to the contrary, Desktop Metal will have no liability for an Exclusions (as defined in Section 8) or for any Third-Party Products or other accessories or materials manufactured or made available by third parties.

**9.2 Liability Cap.** Except (i) with respect to a breach of a party's confidentiality obligations hereunder or a misappropriation of the other party's Intellectual Property Rights, (ii) for a party's indemnification obligations under Section 8 above, and (iii) for Fees owing from Buyer pursuant to an Order hereunder, the total cumulative liability of a party arising from or relating to this Agreement will not exceed an amount equal to the Fees paid or payable by Buyer to Desktop Metal in the twelve (12) months immediately preceding the date of the event that gave rise to the claim.

## 10. INTELLECTUAL PROPERTY RIGHTS

**10.1 Reservation of Rights.** Except as expressly otherwise set forth in this Agreement, Desktop Metal owns and will retain all right, title and interest (including all Intellectual Property Rights) in and to the Products, Spare Parts, Consumables, Software, Services, Product Operation Data, Desktop Metal Inputs or Desktop Metal trademarks, and any Improvements, derivatives, and customizations thereof. Subject to Desktop Metal's reserved rights as set forth in this Section, Buyer owns and will retain all right, title and interest (including all Intellectual Property Rights) in and to any prototypes, outputs or other end-use products produced by Buyer using the Products, Spare Parts, Consumables, Software, and/or Services ("**Work Product**").

**10.2 License of Rights.** Except as required by law, upon purchase of the Products, Spare Parts and/or Consumables, Desktop Metal licenses to Buyer any Intellectual Property Rights incorporated into such Products and/or Consumables solely in order to use the purchased Products and/or Consumables for their intended purpose.

**10.3 Ownership of Desktop Metal Software.** Subject to the rights expressly granted in this Agreement, Desktop Metal retains all right, title and interest in and to the Software, and Buyer acknowledges that it neither owns nor acquires any additional rights or licenses in and to the foregoing not expressly granted by this Agreement.

## 11. PRODUCT DATA

**11.1 Design Data.** Buyer may, on a periodic basis, submit or enter into the Products or Software design files and models ("**Design Data**"). Buyer retains all right, title and interest in and to the Design Data. Subject to the foregoing, Buyer hereby grants to Desktop Metal a non-exclusive, non-transferable right and license to access and use the Design Data for the limited purposes of performing Desktop Metal's obligations under this Agreement in connection with the Products, Software, and/or Services. Desktop Metal will implement and maintain reasonable and appropriate technical and organizational measures designed to protect Design Data against unauthorized access, accidental loss or damage, and unauthorized destruction. Buyer acknowledges and agrees that Desktop Metal has no obligation to back-up or retain Design Data, nor will Desktop Metal have any liability for any loss or corruption of Design Data.

**11.2 Product Operation Data; Desktop Metal Inputs.** Desktop Metal may, on a periodic basis, collect or receive data from or through the Products, Spare Parts, Software or Services, including information identifying a Product's status (such as operation details or logs about any function being performed or Consumables usage) and aspects of the Product's environment that may affect its operations (all such data, collectively, "**Product Operation Data**"). Desktop Metal retains all right, title and interest in and to the Product Operation Data. In addition, in connection with the Products, Spare Parts, Consumables, Software or Services hereunder or otherwise in the course of this Agreement (for example and without limitation, through Desktop Metal's provision of development or engineering advice or assistance to Buyer), Desktop Metal may discover, develop, conceive, invent, utilize and/or make available to Buyer for use methods, processes, tools, manufacturing techniques, designs, Specifications, improvements, derivatives, customizations, feedback, advice and other Desktop Metal inputs ("**Desktop Metal Inputs**"). Desktop Metal retains all right, title and interest in and to the Desktop Metal Inputs. Subject to the foregoing, Desktop Metal hereby grants Buyer a nonexclusive, non-transferable right and license to access and use the Desktop Metal Inputs solely to create and as incorporated into the Work Product for which such Desktop Metal Inputs were provided or made available by Desktop Metal under this Agreement.

## 12. CONFIDENTIALITY

Each Party will have access to certain Confidential Information of the other. "**Confidential Information**" will mean all written, visual, or oral information, disclosed by either Party to the other, related to the operations of either Party

or a third party, the terms of this Agreement, and terms on any Order, that have been identified as confidential or should reasonably be known to the recipient to be confidential or proprietary given the nature of the information or the circumstances of disclosure. By way of example, Confidential Information may include, without limitation, information relating to products, product development activities and roadmaps, technical details, software source code, plans, strategies, operational activities, employees, customers, finances, and marketing plans. Without limiting the foregoing, Design Data will be deemed Confidential Information of the Buyer and Product Operations Data, Desktop Metal Inputs, Specifications and non-public information regarding the Products, Software and/or Services will be deemed Confidential Information of Desktop Metal. Each Party agrees: (a) not to disclose the Confidential Information of the other to anyone except its employees, contractors and advisors (“**Representatives**”) on a strict need to know basis and subject to said Representatives being bound by written confidentiality obligations that would treat the confidentiality and nondisclosure of Confidential Information at least as strictly as those contained herein; (b) to use the Confidential Information strictly for the performance or receipt of its obligations under this Agreement; and (c) to use commercially reasonable efforts to protect the confidentiality of the Confidential Information. Each Party may disclose Confidential Information to the extent required: (i) by securities laws; (ii) to comply with a court or governmental order, or to comply with Applicable Law, in each case, as set forth below; or (iii) to establish or preserve a Party’s rights under this Agreement. Each Party will be responsible for the acts and omissions of its Representatives related to any breach of this Section.

### **13. TERM AND TERMINATION**

**13.1 Term.** This term of this Agreement shall commence on the Effective Date and remain in effect unless terminated by either Buyer or Desktop Metal as set forth herein.

**13.2 Termination.** Either Party may terminate this Agreement if the other Party is in breach of any material obligation under this Agreement and does not cure such breach within thirty (30) days after receiving written notice thereof (fifteen (15) days for payment obligations). Desktop Metal may terminate this Agreement, effective immediately upon notice to Buyer, if Buyer breaches its obligations pursuant to Sections 12 or 15.1, ceases business operations, assigns its assets for the benefit of creditors, becomes bankrupt, or otherwise seeks to dispose of all or substantially all of its assets or the business to which this Agreement relates. Further, this Agreement shall be deemed to have terminated in the event that no Order has been in effect for a period of twelve (12) consecutive months.

**13.3 Effects of Termination.** Upon termination of this Agreement: (a) any outstanding amounts owed by Buyer to Desktop Metal will become immediately due and payable and (b) the only terms of this Agreement that will survive the termination of this Agreement are those terms that are necessary to survive in order to give such terms the full and intended meaning, and such terms shall survive only to the extent and duration necessary to give such terms their intended meaning and effect; provided, however, that, other than a termination of this Agreement by Desktop Metal pursuant to Section 13.2, all then-current Orders shall survive pursuant to their respective terms.

### **14. MARKETING.**

The Parties may engage in a range of marketing activities to help promote the relationship and collaboration between the Parties generally and any of the components of this Agreement, specifically as appropriate to generate market interest. Such marketing activities may include, but are not limited to, announcements (press releases or equivalent) highlighting the collaboration between the Parties, promotion on each Party's respective website and other collateral for distribution to customers and/or end users, as applicable. Prior to public release, such activities shall be approved by both Parties. Notwithstanding the foregoing, Buyer hereby authorizes Desktop Metal to use the Buyer’s name and logo in customer lists on its website and in other marketing materials.

### **15. GENERAL**

**15.1 Compliance.** Each Party shall perform its obligations hereunder in compliance with all Applicable Laws, regulations, and other legal requirements, including but not limited to, laws or regulations related to restrictions on the use of certain hazardous substances in electrical and electronic equipment, such as RoHS, WEEE, REACH, etc. In addition, the Products, Consumables, Software, and/or Services, are subject to U.S. and foreign export control laws and regulations (including without limitation the International Traffic in Arms Regulations (“**ITAR**”), the Export Administration Regulations (“**EAR**”), and the Foreign Asset Control Regulations administered by the Office



of Foreign Assets Control (“OFAC”) in the U.S. Department of the Treasury) and must be used, sold, exported, re-exported, and transferred in compliance with such export laws and regulations. Any offer for any Desktop Metal Services made on our websites is void where prohibited by law. Buyer may not use or otherwise export or re-export the Desktop Metal Products, Consumables, or Software except in accordance with Applicable Laws, including export laws. In particular, but not in limitation, Buyer may not export or re-export the Desktop Metal Product, Consumables, or Software into any U.S. embargoed countries or to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person’s List or Entity List. Buyer represents that Buyer is not located in any country or on any list where the provision of any Products, Consumables, Software or Services to Buyer would violate Applicable Law. Buyer agrees to comply with all Applicable Laws that apply to its use of the Desktop Metal Products, Consumables, Software, and/or Services. Upon request by Desktop Metal, Buyer shall promptly provide Desktop Metal complete and accurate End User Certificates (EUCs) for the Products which shall automatically become an integral part of this Agreement. If Buyer fails to promptly provide Desktop Metal with complete and accurate End User Certificates, Desktop Metal may terminate this Agreement and shall not be liable to Buyer in any way.

**15.2 Assignments.** Buyer may not assign, delegate, or otherwise transfer (by operation of law or otherwise) this Agreement or any of its rights or obligations to a third party without Desktop Metal’s written consent, which consent may be withheld or provided in Desktop Metal’s sole discretion.

**15.3 Notice.** Any notice under this Agreement must be in writing and sent by certified letter, receipted commercial courier or e-mail transmission (acknowledged by recipient) to: (i) for Buyer, the address set forth on the relevant Order, and (ii) for Desktop Metal, to: Attn: VP of Sales, Desktop Metal, 63 Third Avenue, Burlington, MA 01803, with a copy to: [contracts@desktopmetal.com](mailto:contracts@desktopmetal.com). Notice shall be deemed given on the date received by the recipient or in the case of email, when acknowledged as received by recipient. Any Party may from time to time change such address or individual by giving the other Party notice in accordance with this Section.

**15.4 Governing Law.** This Agreement will be governed by, construed and interpreted in accordance with the law of The Commonwealth of Massachusetts, without giving effect to any conflict of laws principles that would cause the law of another jurisdiction to apply. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**15.5 Waivers.** All waivers must be in writing. 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.

**15.6 Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under Applicable Law and the remaining provisions will continue in full force and effect.

**15.7 Ultrahazardous Activities.** The Desktop Metal Products, Consumables, Software, and/or Services are not designed or intended for use in any hazardous environment requiring fail-safe performance or operation in which the failure of the Desktop Metal Services could lead to death, personal injury, or property damage, including without limitation the design or operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems (or the on-line control of equipment in any such environment.) Buyer hereby agrees that it will not use the Desktop Metal Services in such environments.

**15.8 Government Use.** Each of the Desktop Metal Products, Consumables, and Software is a “commercial item” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government Buyers may use the Services with only those rights set forth in this Agreement.

**15.9 Force Majeure.** Neither Party shall be liable to the other for any loss or damage as a result of its failure to perform any of its obligations under this Agreement or any delay due to any cause beyond such Party’s reasonable control, during any period in which such performance is delayed because rendered impracticable or impossible due to circumstances beyond its reasonable control, including acts of God, fire, theft, accident, earthquake, flood, war, pandemic, sabotage, slowdown, strikes or other labor difficulties, riot, embargo, government act, regulation, rule,

ordinance, or request, or inability to obtain necessary labor, materials, manufacturing facilities, or transportation (“**Force Majeure**”), provided that the Party experiencing such Force Majeure Event promptly notifies the other Party of the delay, uses commercially reasonable efforts to mitigate the impact. Without limiting the definition of Force Majeure, even in the absence of government, travel or other similar mandates, rules or restrictions, performance by Seller shall still be considered impracticable if in Seller’s opinion performance of installation, Support Services and other Services would present a health or safety risk to its employees or contractors due to COVID-19. Notwithstanding the foregoing, any such Force Majeure shall not relieve the payment obligations of the Buyer to Desktop Metal hereunder.

**15.10 Insurance.** During the term of this Agreement, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability in a sum no less than US\$1,000,000 with financially sound and reputable insurers. Upon Desktop Metal’s request, Buyer shall provide Desktop Metal with a certificate of insurance from Buyer’s insurer evidencing the insurance coverage specified in this Agreement. If requested by Desktop Metal, the certificate of insurance shall name Desktop Metal as an additional insured. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Desktop Metal insurers and Desktop Metal.

**15.11 Entire Agreement.** This Agreement, including all exhibits, constitutes the entire agreement between the Parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. Any additional, different, conflicting or inconsistent terms on any purchase order or any other document submitted by Buyer are hereby expressly rejected.