

Fiber™

[Subject]

Deposit Terms and Conditions

[Details]

You are hereby authorizing Desktop Metal, Inc. (“Desktop Metal”) to charge your provided payment method for the deposit amount (“Deposit”). By making the Deposit you have secured a subscription for the Desktop Metal Services when the Desktop Metal Services become commercially available.

Approximately two weeks prior to delivery of the Desktop Metal Services, DM will contact you via email providing you with details regarding the applicable taxes, delivery charges and any other applicable fees for your order (“Additional Fees”). Upon receipt of this email, you will have fourteen (14) calendar days (“Cancellation Period”) to cancel your order utilizing the method set forth in the email.

If you do not cancel the order, your use of the Desktop Metal Services shall be governed by the Subscription Agreement. Do not submit a Deposit if you do not agree to the terms of the Subscription Agreement. From time to time we will ask you to provide information so that we can perform our obligations. We will maintain your personal information in accordance with our Privacy Policy, which is available at www.desktopmetal.com/privacy-policy

If you do not cancel your order during the Cancellation Period, DM will (i) apply the Deposit towards the Subscription Fee, (ii) automatically charge your payment method on file for the Additional Fees and (iii) provide the Desktop Metal Services to you. If you cancel your order during the Cancellation Period, your Deposit will be refunded in full via the same payment method it was received.

Fiber™

[Subject]

Subscription Agreement

[Details]

This **Subscription Agreement** (this “**Agreement**”) is between Desktop Metal, Inc. (“**Desktop Metal**”) and You (“**Customer**”). The terms of this Agreement are effective when you click “Accept”. Customer and Desktop Metal may be referred to individually as a “**Party**” and collectively as the “**Parties**.” The Parties may from time to time enter into additional Orders, which will be part of this Agreement. This Agreement governs Desktop Metal’s provision, and Customer’s use of certain Hardware, Software and Services furnished by Desktop Metal to Customer (collectively “Desktop Metal Services”).

Definition:

“**Authorized Users**” means those individuals who Customer has authorized to access the Desktop Metal Services.

“**Customer Data**” means the Customer-specific and Customer-identifiable data submitted to or collected by the Desktop Metal Services by or on behalf of Customer.

“**Early Cancellation Fee**” means the fee which Customer shall pay to terminate the Desktop Metal Services during the Initial Subscription Term. The applicable Early-Cancellation Fee is detailed on the Policies Page.

“**Effective Date**” means the date on which you accept the terms of this Agreement.

“**Hardware**” means the 3D printer and related equipment and firmware which Desktop Metal shall provide to Customer on a “Hardware as a Service” basis.

“**Intellectual Property Rights**” means current and future worldwide rights under patent, copyright, trade secret, trademark, moral rights and other similar rights.

“**Initial Subscription Term**” means the initial minimum subscription term as further detailed in the Order.

“**Order**” means the ordering document, or order page, for the Desktop Metal Services.

“**Policies**” means the policies and documents applicable to the Desktop Metal Services, that are located at the following URL: desktopmetal.com/company/customerpolicies (“**Policies Page**”).

“**Renewal**” means the one (1) year renewal term following either the Initial Subscription Term, or a previous renewal term.

“**Security Emergency**” means: (i) use of the Desktop Metal Services that do or could disrupt the Desktop Metal Services, other customers’ use of the Desktop Metal Services, or the infrastructure used to deliver the Desktop Metal Services; or (ii) unauthorized third-party access to the Desktop Metal Services.

“**Services**” means the services provided by Desktop Metal under this Agreement as set forth in the description (the “Services Description”) available on the Policy Page.

“**Software**” means the Web-based application services made generally available by Desktop Metal on a subscription basis for use with the Hardware.

“**Subscription Commencement Date**” means the date on which Desktop Metal has shipped the Hardware to Customer and deliveries to Customer the mechanism for accessing the Software.

“**Subscription Fee**” means the annual fee charged to Customer for use of and access to the Desktop Metal Services.

1. ACCESS AND USE

1.1 Subscription Term. Desktop Metal shall provide the Desktop Metal Services for the period set forth in the Order and any Renewals thereafter (“**Subscription Term**”).

1.2 Access. Subject to the terms and conditions of this Agreement, Desktop Metal hereby grants to Customer and its Authorized Users a non-exclusive, non-transferable right to access the Desktop Metal Services during the Subscription Term.

1.3 Use of the Desktop Metal Services. Customer is responsible for use of the Desktop Metal Services by its Authorized Users. Customer and its Authorized Users must use the Desktop Metal Services in compliance with the Acceptable Use Policy posted on the Policies Page. Customer will comply with laws and regulations applicable to Customer’s use of the Desktop Metal Services, if any. Customer will not (i) sell, resell or lease the Desktop Metal Services; (ii) use the Desktop Metal Services for activities where use or failure of the Desktop Metal Services could lead to physical damage, death or personal injury; or (iii) reverse engineer the Desktop Metal Services, nor attempt nor assist anyone else to do so, unless this restriction is prohibited by law.

2. SUBSCRIPTION TERMS

2.1 Hardware. Desktop Metal will provide to Customer the Hardware solely for use as part of Desktop Metal Services during the Subscription Term commencing on the Subscription Commencement Date. Customer shall: (a) ensure that the Hardware is maintained in good working condition as specified by Desktop Metal; and (b) not assign, pledge, transfer, encumber, or grant any security interest in the Hardware to any third party in any manner whatsoever, nor attempt to do any of the foregoing. Customer will not relocate the Hardware to another physical location without Desktop Metal’s prior consent. While the Hardware is in Customer’s possession, Customer hereby assumes and will bear all risk of damage, loss, theft, or destruction of the Hardware. If the Hardware is damaged (reasonable wear and tear excepted), Customer will notify Desktop Metal and Desktop Metal will repair or restore the Hardware at Customer’s cost so that the Hardware is returned to good working order, condition, and repair. Customer will pay to Desktop Metal the full cost of repair or replacement, as communicated by Desktop Metal, of any Hardware that is lost, stolen, destroyed, or damaged beyond repair during the Subscription Term.

2.2 Software. Desktop Metal grants to Customer a non-exclusive, non-transferable, non-sublicensable, revocable and limited license during the Subscription Term to use the Software solely in conjunction with the Desktop Metal Services. Notwithstanding anything to the contrary in this Agreement, any open source or third party software or components included in or provided with the Software are provided solely in accordance with, and subject to, the applicable open source and third party software licenses.

2.3 Services. During the Subscription Term, Desktop Metal shall provide the Services to Customer as described in the Services Description.

2.4 Use Restrictions. Customer shall not: (a) modify, reverse engineer or otherwise attempt to discover any underlying confidential information of any Desktop Metal Services (unless permitted by applicable law); (b) allow third parties other than Authorized Users to gain access to the Desktop Metal Services; or (c) remove any proprietary notices or markings on the Desktop Metal Services.

2.5 Modifications. Desktop Metal may update the Desktop Metal Services from time to time. If Desktop Metal changes the Desktop Metal Services in a manner that materially reduces their functionality, Desktop Metal will notify Customer at the email address associated with the account, and Customer may provide notice within thirty (30) days of the change to terminate the Agreement.

2.6 Inspection. Customer will have fourteen (14) days after receipt of Hardware to notify Desktop Metal in writing of any non-conforming or damaged goods.

3. PAYMENT OBLIGATIONS AND PAYMENT TERMS

3.1 Subscription Fees. The Desktop Metal Services are provided on subscription basis. Customer will pay Desktop Metal or its authorized reseller (“Reseller”) the Subscription Fee for the Desktop Metal Services in the currency and pursuant to the payment terms indicated in the Order. The Subscription Fees are exclusive of any taxes or shipping fees which will be billed separately. Subscription Fees are non-refundable except as required by law or as otherwise expressly provided in this Agreement.

3.2 Taxes. The Subscription Fees are exclusive of taxes and Customer is responsible for all taxes and duties, including without limitation, any sales use, value added, royalty or withholding taxed imposed by any U.S. government entity or other government entity. Desktop Metal or Reseller will charge taxes when required to do so. If Customer provides Desktop Metal or Reseller with a valid tax exemption certificate, Desktop Metal or Reseller will not collect the taxes covered by that certificate.

3.3 Payment. Customer hereby authorizes Desktop Metal or Reseller to charge the Customer’s payment method on file for the applicable Subscription Fees, taxes, and shipping fees. Desktop Metal may suspend or terminate the Desktop Metal Services if the Subscription Fees are past due. Customer will provide complete and accurate billing and contact information to Desktop Metal or Reseller.

3.4 Renewals. Unless the Desktop Metal Services are terminated in accordance with the terms of this Agreement, Desktop Metal may automatically charge the Customer’s payment method on file for any Renewals. Desktop Metal may revise the Subscription Fee at the time of the Renewal by providing the Customer at least thirty (30) days’ notice prior to the Renewal.

3.5 Cancellation. During the Initial Subscription Term, Customer may terminate the Desktop Metal Services at any time by providing Desktop Metal thirty (30) days’ written notice and paying the Early Cancellation Fee. After the Initial Subscription Term, Customer may terminate the Desktop Metal Services at any time by providing thirty (30) days’ notice.

4. TERM AND TERMINATION

4.1 Term. This Agreement will continue to apply as long as the Subscription Term remains in effect, unless earlier terminated by either Customer or Desktop Metal as set forth herein. The Agreement is subject to automatic Renewal thereafter, unless either Party provides written notice of termination to the other Party at least thirty (30) days prior to the expiration of the Initial Subscription Term or the applicable Renewal Term. Either party may terminate this Agreement if the other 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. Desktop Metal may terminate this Agreement, effective immediately upon notice to Customer, if Customer 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. In addition, Desktop Metal may terminate the Desktop Metal Services for convenience at any time by providing thirty (30) days’ written notice and, upon receipt of the Hardware in good working condition, Desktop Metal will refund any pre-paid but unused Subscription Fees.

5.2 Effects of Termination. Upon termination or expiration of this Agreement: (a) any outstanding amounts owed by Customer to Desktop Metal will become immediately due and payable; (b) all license rights granted under this Agreement will immediately cease to exist; and (c) Customer will promptly return all Hardware to Desktop Metal in good working condition or Desktop Metal may charge a penalty fee to the Customer’s payment method on file as set forth on the Policies Page.

5.3 Suspension of Service. If Customer fails to pay undisputed amounts in a timely fashion, Desktop Metal shall have the right to suspend the Desktop Metal Services, without liability to Customer until such amounts are paid in full.

5.4 Security Emergencies. Notwithstanding anything in the Agreement, if there is a Security Emergency, Desktop Metal may automatically suspend use of the Services. Desktop Metal will make commercially reasonable efforts to narrowly tailor the suspension as needed to prevent or terminate the Security Emergency.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Reservation of Rights. Except as expressly set forth herein, this Agreement does not grant (i) Desktop Metal any Intellectual Property Rights in Customer Data or (ii) Customer any Intellectual Property Rights in the Desktop Metal Services or Desktop Metal trademarks and brand features.

6.2 Customer Data. Customer retains all right, title and interest in and to the Customer Data. Subject to the foregoing, Customer hereby grants to Desktop Metal a non-exclusive, non-transferable right and license to use the Customer Data during the Subscription Term for the limited purposes of performing Desktop Metal's obligations under this Agreement and to use the Customer Data in combination with other customers' data to improve and support the Desktop Metal Services.

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

7. DATA PRIVACY AND SECURITY

As further described in Desktop Metal's Privacy Policy which is located on the Policies Page, Desktop Metal will take reasonable and appropriate technical and organizational measures designed to protect Customer Data against unauthorized access, accidental loss or damage, and unauthorized destruction. Customer acknowledges and agrees that Desktop Metal has no obligation to back-up Customer Data, nor will Desktop Metal have any liability for any loss or corruption of Customer Data, nor will Desktop Metal have any obligation to retain any Customer Data after the Subscription Term.

8. CONFIDENTIALITY

Each Party will have access to certain Confidential Information of the other. Confidential Information will mean all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party, terms of this Agreement, and terms on any Order Forms, that have been identified as confidential or should reasonably be treated as confidential. Without limiting the foregoing, Desktop Metal Services (including without limitation the Hardware and Software) 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 a written duty of confidence; (b) to use the Confidential Information strictly for the performance or receipt of 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; 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.

9. LIMITED WARRANTIES; DISCLAIMER

9.1 Desktop Metal Services Warranty. Desktop Metal warrants that the Desktop Metal Services will be performed in a professional and workmanlike manner consistent with industry standards for similar types of services. During the Subscription Term Desktop Metal will, at our option, either (i) repair any material defect in the Desktop Metal Services at no charge, by providing customer will new or refurbished Hardware or Software, as applicable and in accordance with the support terms set forth in the Services Description or (ii) terminate the Desktop Metal Services and upon Customer's return of the Hardware to Desktop Metal, issue a refund of any pre-paid but unused Subscription Fees.

9.2 Consumable Warranty. For a period of ninety (90) days from the date of shipment, the consumables shall conform to the applicable specification. In the event of breach of this warranty, Desktop Metal will, at its sole cost, replace the defective consumable with a replacement consumable that conform to the applicable specification. Customer is responsible for all shipping costs associated with returning defective Hardware or Consumable to Desktop Metal; provided, however, that if Desktop Metal determines that the Hardware or consumable is eligible for warranty coverage, Desktop Metal will pay the shipping costs associated with shipping the repaired or replacement Hardware or consumable to Customer.

9.3 Exclusions. The foregoing limited warranty shall only apply to the extent that: (a) Customer maintains and operates Desktop Metal System in accordance with the documentation; and (b) Customer uses only consumables purchased from Desktop Metal or its authorize vendors. Further, the foregoing limited warranty does not apply: (i) to damage caused by Customer's failure to follow instructions relating to the Desktop Metal Services use, including but not limited to the operation of the Desktop Metal Services outside the permitted or intended uses described in the documentation and failure to perform the preventive and routine maintenance recommended by the documentation; (ii) to damage caused by accident, abuse, vandalism, misuse, power surge, lightning, water, fire, earthquake, or other external causes or acts of God; (iii) to damage caused by service (including upgrades and expansions) performed by anyone who is not an authorized representative of Desktop Metal; (iv) Desktop Metal Services that have been modified to alter functionality or capability.

9.4 WARRANTY DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DESKTOP METAL SERVICES AND CONSUMABLES ARE PROVIDED "AS IS," AND DESKTOP METAL MAKES NO (AND HEREBY DISCLAIMS) ALL WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE DESKTOP METAL SERVICES OR CONSUMABLES (IN WHOLE OR IN PART).

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10. INDEMNIFICATION

Desktop Metal will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that Desktop Metal Services infringes the intellectual property rights of such third party, and Desktop Metal will pay those costs and damages awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. If Desktop Metal Services 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 Customer the right to continue use of Desktop Metal Services; (b) modify Desktop Metal Services so that it becomes non-infringing; or (c) refund to Customer any fees prepaid by Customer for Desktop Metal Services, prorated for the amount of time remaining in the applicable term, and terminate the applicable order by written notice to Customer. 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 Services not in accordance with this Agreement or for purposes beyond the scope set forth in the applicable documentation, (ii) any use of any release of Desktop Metal Services other than the most current release made available to Customer, (iii) any modification of Desktop Metal Services by any person other than Desktop Metal or its authorized agents or subcontractors, (iv) any combination or integration of Desktop Metal Services with hardware, software, data, and/or technology not provided by Desktop Metal, or (v) any Open Source Software and/or Third Party Software. This Section states Desktop Metal's entire liability and Customer's sole and exclusive remedy for infringement claims and actions. Desktop Metal's obligations as set forth above are expressly conditioned upon each of the following: (a) Customer will promptly notify Desktop Metal in writing of any threatened or actual claim or suit; (b) Desktop Metal will have sole control of the defense or settlement of any claim or suit; and (c) Customer will reasonably cooperate with Desktop Metal, at Desktop Metal's expense, to facilitate the settlement or defense of any claim or suit.

11. LIMITATION LIABILITY

11.1 Disclaimer. In no event shall Desktop Metal be liable to Customer or any third party for any consequential, indirect, exemplary, special or incidental damages, including any loss of use, data, profits, or goodwill, arising from or relating to this Agreement, or the Desktop Metal Services.

11.2 Liability Cap. The total cumulative liability of Desktop Metal arising from or relating to this Agreement and the Desktop Metal Services will not exceed the Subscription Fee paid to Desktop Metal in the twelve (12) months preceding the circumstances giving rise to the claim.

12. GENERAL

12.1 Compliance with Export Laws. The Desktop Metal Services, are subject to U.S. and foreign export control laws and regulations 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. You may not use or otherwise export or re-export the Desktop Metal Services except in accordance with applicable export laws. In particular, but not in limitation, you may not export or re-export the Desktop Metal Services 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. You represent that you are not located in any country or on any list where the provision of any product or service to you would violate applicable law. Customer agrees to comply with all local, state, federal, and national laws, statutes, ordinances, and regulations that apply to your use of the Desktop Metal Service.

12.2 Assignments. Neither Party may 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 the other Party's written consent, except that either Party may assign or transfer this Agreement without such consent as a consequence of a merger, acquisition, consolidation, reorganization, or sale of substantially all of its assets or of the business to which this Agreement pertains.

12.3 Governing Law. This Agreement will be governed by the laws of the Commonwealth of Massachusetts, without giving effect to any conflict of laws principles that would cause the law of another jurisdiction to apply.

12.4 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.

12.5 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.

12.6 Ultrahazardous Activities. The Desktop Metal 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.) Customer hereby agrees that it will not use the Desktop Metal Services in such environments.

12.7 Government Use. The Desktop Metal Service (including without limitation the Hardware) 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 end users may use the Service with only those rights set forth in this Agreement.

12.8 Modification of Software and Policies. Notwithstanding anything to the contrary in this Agreement, from time to time at its sole reasonable discretion Desktop Metal may make upgrades, changes and/or improvements to: (i) the Software, in order to enhance the Software generally and/or remedy any issues with the Software; or (ii) the Policies, in order to address changes to Products or applicable laws or regulations. Notwithstanding the foregoing, except as is required as a result of changes to applicable laws or regulations, Desktop Metal will not modify any Software or Policies in any way designed to: (a) materially degrade the Software or Policies; or (b) add additional material obligations for Customer.

12.9 Entire Agreement. This Agreement 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 Customer are hereby expressly rejected.