



1000Kelvin GmbH

Last Updated: March, 2023

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

These Buyer Terms and Conditions (the "**Agreement**") govern your ("**You**" or "**Your**") use of 1000Kelvin, Inc.'s ("**1000Kelvin**") website (the "Website"). PLEASE READ THIS AGREEMENT CAREFULLY. BY ACCESSING OR USING THE WEBSITE, INCLUDING PLACING AN ORDER WITH 1000KELVIN FOR MANUFACTURING SERVICES (THE "**SERVICES**"), CLICKING ON THE "I ACCEPT" BUTTON, AND/OR COMPLETING THE REGISTRATION PROCESS, YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THIS AGREEMENT, (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH 1000KELVIN, AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT PERSONALLY OR ON BEHALF OF THE ENTITY YOU REPRESENT. IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT

ACCESS OR USE THIS WEBSITE OR THE SERVICES. 1000Kelvin's General Terms and Conditions available at: www.1000Kelvin.com/legal ("**General Terms**") are incorporated herein by reference.

PLEASE NOTE that 1000Kelvin 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. 1000Kelvin will also update the "Last Updated" date at the top of this Agreement. If 1000Kelvin makes any material changes, and You have registered with 1000Kelvin to create an Account (as defined below), 1000Kelvin may also send You an email to the last email address You provided pursuant to this Agreement. Any changes to this Agreement will be effective immediately for new users of the Website and/or Services and will be effective thirty (30) days after posting or providing notice of such changes on the Website for existing users (whichever is earlier). 1000Kelvin may require You to provide consent to the updated Agreement in a specified manner before further use of the Website and/or Services is permitted. If You do not agree to any change(s) after receiving a notice of such change(s), You shall stop using the Website and/or Services. Otherwise, Your continued use of the Website and/or Services shall be deemed Your conclusive acceptance of the modified terms and conditions.

1000Kelvin only uses Your information as described in the [Privacy Policy](#). We view protection of users' privacy as a very important community principle. You represent and warrant to us that any data, information, records and files that You load, transmit to or enter into the Website will only contain Personal Information, as defined in the [Privacy Policy](#), for which You have provided all necessary notices and disclosures, obtained all applicable third-party consents and permissions and otherwise have all authority, in each case as required by applicable laws, to enable us to make available the Services.

1. SERVICES.

1.1 **About the Services.** 1000Kelvin hosts and maintains an online platform available at the Website that enables 1000Kelvin's buyers to upload their three-dimensional (3D) models for their manufacturing projects. 1000Kelvin maintains a vendor manufacturing program consisting of a network of third-party manufacturers (each, a "**Partner**") capable of performing manufacturing services in order to offer our buyers greater efficiencies including pricing, certifications and lead times while always striving for excellent quality manufacturing services. When a buyer uploads their Specifications (as defined below) for a manufacturing project, 1000Kelvin will either manufacture, or subcontract with one of 1000Kelvin's Partners to have manufactured, the parts, assemblies or items to be delivered pursuant to the buyer's order (each, a "**Part**").

1.2 **Responsibilities When Using the Services.** By using the Services, You agree to:

- Comply with all applicable laws and regulations, including, but not limited to, all intellectual property, data, privacy any export control laws;
- Upload and disseminate only content or information that You own all required rights to under law, are authorized to disseminate (and are not subject to any confidentiality obligations), and do so only consistent with applicable law and as permitted by any agreements to which You are bound;
- Use reasonable efforts to prevent unauthorized access to or use of the Services;
- Monitor and control all activity conducted through Your Account in connection with the Services; and
- Promptly notify 1000Kelvin if You become aware or reasonably suspect any illegal or unauthorized activity or a security breach involving Your Account, including any loss, theft, or unauthorized disclosure or use of Your Account.

If 1000Kelvin has reason to believe that You have failed to comply with the above, 1000Kelvin may without notice suspend or terminate Your access to the Services and refuse any and all current or future use of the Services (or any portion thereof).

2. **REGISTRATION.** In order to use certain Services, You may be required to register for an account ("**Account**"). In registering for the Services, You agree to (1) provide true, accurate, current and complete information about You as prompted in the Website account details section ("**Registration Data**"); and (2) maintain and promptly update Your Registration Data to keep it true, accurate, current and complete. You are responsible for all activities that occur under Your Account, and 1000Kelvin will not be liable for any loss or damage (of any kind and under any legal theory) to You or any third party arising from Your inability or failure for any reason to comply with these Terms and any applicable General Terms. You may not share Your Account or password with anyone, and You agree to (a) notify 1000Kelvin immediately of any suspected or confirmed unauthorized use of Your password or any other breach of security; and (b) exit from

Your Account at the end of each session. If You provide any information that is untrue, inaccurate, not current or incomplete, or 1000Kelvin has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, 1000Kelvin has the right to suspend or terminate Your Account and refuse any and all current or future use of the Website and Service (or any portion thereof).

3. ORDERING PROCESS

3.1. Placing Orders. In order to place an order for a Part, You must upload an acceptable model for the Part that You would like to be produced pursuant to the terms of this Agreement. During the ordering process You may choose, from the list of available options, the material, color, surface and size of the measurement (mm or inches) for your Part. Certain restrictions with respect to the thickness, material, color and surfaces may apply. For an additional fee, You may request material certifications and inspection reports for Your Parts during the ordering process. 1000KELVIN WILL NOT ALTER, MODIFY OR CHANGE THE SPECIFICATIONS OF ANY PART WITHOUT OBTAINING WRITTEN APPROVAL FROM YOU. You will be able to see and review the order and the estimated costs (production, delivery, and other taxes when applicable) provided by 1000Kelvin to You before finalizing the order (the "**Quote**"). No contract to manufacture any Part exists until 1000Kelvin acknowledges Your acceptance of its Quote by a confirmatory email or other appropriate means of communication, as determined by 1000Kelvin in its sole discretion. SINCE EACH ORDER IS CUSTOM MANUFACTURED, YOU MAY NOT CANCEL AN ORDER ONCE IT HAS BEEN PLACED. 1000Kelvin, at its sole discretion, may permit a buyer to cancel an order and may charge a fee not to exceed 3% of the total order value if a buyer requests such a cancellation from 1000Kelvin, provided that no work has been done for such an order as of the date of cancellation.

3.2 Specifications. If You accept 1000Kelvin's Quote by placing an order referencing the Quote using the Quote number, 1000Kelvin will, subject to the terms herein, manufacture, or have manufactured, the Part(s) in accordance with the 3D geometry and features related to the Part(s) and to the tolerances as set forth in the Quote (except if located in the Notes section) (collectively, the "**Specifications**"). You are solely responsible for ensuring that the Specifications in the Quote and other information You submit in Your order is accurate and complete before paying for it. YOU MAY NOT AMEND OR MODIFY THE SPECIFICATIONS after YOU HAVE PLACED YOUR ORDER.

3.3 1000Kelvin Cancellations. 1000Kelvin may, at any time during the quotation, ordering and the manufacturing process, revoke and/or cancel any Quote/order, if there are technical or other reasons (such as a concern about intellectual property ownership of the design or the legality of the Part) to do so. In such case, 1000Kelvin will reimburse You all monies paid for such Part, if any.

3.4 Limitations. 1000Kelvin will manufacture Your Part(s) in accordance with the Manufacturing Standards. Due to technical limitations of current technology, it may be impossible or commercially impracticable to manufacture certain Parts in accordance with Your Specifications. In such cases, 1000Kelvin will use its commercially reasonable efforts to contact You. Upon written approval from You.



3.5 Subcontracting. You acknowledge and agree that 1000Kelvin may subcontract or otherwise delegate any order you place for a Part to one of 1000Kelvin's Partners. As such, You acknowledge and agree that 1000Kelvin may share Your Specifications with our Partners in order to process and manufacture your order. You will not have any obligation to pay any Partner directly.

3.6 Compliance with Export Controls. The data, items, deliverables, and Services may be subject to national, foreign, and international trade and export control laws and regulations ("**Export Laws**"). You shall identify any three-dimensional (3D) models and resulting items that are controlled under Export Laws at the time of providing them to 1000Kelvin, including but not limited to identifying data and items that are controlled under the International Traffic in Arms Regulations ("**ITAR**"). NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, YOU SHALL BE LIABLE FOR ALL DAMAGES, LOSSES, AND LIABILITIES INCURRED BY 1000KELVIN AS A RESULT OF YOUR NON-COMPLIANCE WITH EXPORT LAWS OR FAILURE TO ACCURATELY IDENTIFY APPLICABLE EXPORT LAWS. When required or requested by 1000Kelvin, You will provide 1000Kelvin with (a) any Harmonized Tariff Schedule ("**HTS**") codes for any Parts, (b) the end use for any such Parts, and (c) the end user of such Parts, within two (2) days of 1000Kelvin's request for such information.

3.7 Prohibited Items. While 1000Kelvin wants to give its buyers the freedom they need to produce the most creative, imaginative and useful projects and Parts, 1000Kelvin maintains the right to refuse any Part that is illegal or designed to harm human beings, or which 1000Kelvin otherwise deems inappropriate in its sole discretion. As such, 1000Kelvin prohibits the use of its Services to manufacture certain Parts designed for use or integration into firearms or for such Parts that require any federal, state or local licenses to manufacture.

4. PRICING AND PAYMENT; 1000KELVIN REFERRAL PROGRAM

4.1. Payment. You agree to pay all fees or charges to Your Account in accordance with the fees, charges and billing terms in effect at the time a fee or charge is due and payable. Unless otherwise expressly agreed in advance by 1000Kelvin, all invoices are due thirty (30) days after the date of invoice or will be paid at the time order placement. 1000Kelvin reserves the right to require payment in advance for certain orders. All invoices are due in full, without any deductions or offsets. All invoices will be deemed final and binding unless You object to an invoice, in writing, within ten (10) days of receipt. All invoices not paid in full within such thirty (30) day period shall



bear interest at the rate of 1.5% per month or the highest rate permitted under law. 1000Kelvin may also draw down on any 1000Kelvin Credits held in your Account in the event you fail to pay any past due invoices within forty-five (45) days of their due date. If You choose to pay for an order by credit card, You must provide 1000Kelvin with a valid credit card (Visa, MasterCard, or any other issuer accepted by us) ("**Payment Provider**"). Your Payment Provider agreement governs Your use of the designated credit card, and You must refer to that agreement and not this Agreement to determine your rights and liabilities. By providing 1000Kelvin with Your credit card number and associated payment information, You agree that 1000Kelvin is authorized to immediately invoice your Account for all fees and charges due and payable to 1000Kelvin hereunder and that no additional consent or notice is required. You agree to immediately notify 1000Kelvin of any change in Your billing address or the credit card used for payment hereunder. 1000Kelvin reserves the right at any time to change its prices and billing methods, either immediately upon posting notice on the Website or by email delivery to You. All prices are calculated in US Dollars and payment to 1000Kelvin must be in the form of US Dollars.

4.2. Taxes and Costs. Unless otherwise stated, the price quoted with respect to the manufacture of any particular Part includes the cost for the Services rendered by 1000Kelvin, the manufacturing of the Part and the standard shipping (as selected by 1000Kelvin), as well as all applicable sales and use taxes. You will be liable for all other transaction duties and taxes (other than taxes based on 1000Kelvin's net income). If Your order is exempt from sales tax, You must submit a valid sales tax exemption certificate.

4.3. Suspension of Services. 1000Kelvin reserves the right to suspend performance hereunder (including the manufacture of the Part) in the event You fail to pay all outstanding amounts when due and 1000Kelvin retains full legal title to Parts until it has received full payment with respect to such Parts and payment on any other Parts that You have ordered. 1000Kelvin reserves the right to refrain from manufacturing additional orders, or additional components of an existing order, as long as the outstanding issued invoices remain unpaid.

4.4. 1000Kelvin Credits. Registered users can earn credits ("**1000Kelvin Credits**") through the following means.

- **Refer a Colleague.** In order to refer a colleague and earn 1000Kelvin Credits, registered users must send their unique referral link to facilitate the invitation, or post their unique link on either Twitter or Facebook. If a Referred Colleague (as defined below) clicks on the link provided to them and purchases a Part, Your Account will be credited with 50 1000Kelvin Credits for the initial purchase only. As used herein, a "**Referred Colleague**" means any potential buyer of 1000Kelvin who, prior to the time of the referral: (i) has not purchased any Parts from 1000Kelvin, and (ii) has not created an Account. 1000Kelvin Credits will only be awarded for the Referred Colleague's initial purchase of a Part, and You will not receive or be entitled to any 1000Kelvin Credits in connection with any subsequent purchases made by any Referred Colleague.



1000Kelvin Credits may be solely redeemed towards the purchase of Parts. Each 1000Kelvin Credit is equal to \$1 and may be redeemed at checkout on future orders. Credits expire after 18 months and are redeemed on a first in, first out basis. 1000Kelvin Credits are not legal tender and cannot be reloaded, resold, transferred for value, redeemed for cash or applied to any other account, except to the extent required by applicable law. 1000Kelvin prohibits and does not recognize any purported transfers of 1000Kelvin Credits outside the Services, or the purported sale, lease, gift or trade in the “real world” of anything that appears or originates outside of the Services.

1000KELVIN RESERVES THE RIGHT TO DRAW DOWN UPON ON YOUR 1000KELVIN CREDITS, IF ANY, IN THE EVENT OF ANY LATE PAYMENT(S) OR OTHER MATERIAL BREACH OF THIS AGREEMENT BY YOU.

5. SHIPMENT ESTIMATES; RISK OF LOSS IN TRANSPORT

5.1 Shipment Estimates. Quotations issued by 1000Kelvin will contain an estimated date of shipment, calculated on the basis of the input data. The term of delivery generated by the online ordering system gives a preliminary indication of planned date of shipment though it does not bind 1000Kelvin in any way. The estimated shipment date is based on the working conditions applicable at the time the agreement is concluded and on the punctual delivery of the materials ordered by 1000Kelvin for the performance of the work. Should a delay arise for which 1000Kelvin is not responsible, as a result of a change in the aforementioned working conditions or because materials ordered in time for the performance of the work are not delivered on time, the shipment date may be extended and 1000Kelvin will not be liable for such delay.

5.2 Risk of Loss. Unless otherwise agreed, all sales of Parts shall be Ex-works Seller’s factory (Incoterms 2000). In the event that You require delivery of the Parts otherwise than Ex-works, You must contact 1000Kelvin in writing in order to detail its requirements. 1000Kelvin, at its discretion, shall arrange the delivery requirements including, without limitation, transport insurance, the mode of transport (1000Kelvin reserves the right to vary the mode of transport if any regulations or other relevant considerations so require) and any special packaging requirements. All costs, taxes, duties and charges related to fulfilling any of Your requests under this Section, shall be paid by You, unless otherwise agreed by both parties.

6. REPLACEMENT PARTS

6.1. No Warranty of Specifications. Upon delivery of a Part, You should inspect the Part carefully. All Parts will be deemed accepted upon delivery to You. You acknowledge and agree that 1000Kelvin will use commercially reasonable efforts to manufacture or have the Part manufactured by our Partners, in accordance with Your Specifications. 1000Kelvin does not warrant Part design or specifications. Since You are solely responsible for the Specifications, and the manufacture of certain Parts in accordance with your Specifications may be impossible or otherwise commercially impracticable, 1000Kelvin does not warrant that Your Part can or will be manufactured in accordance with Your Specifications. IN ADDITION, EXCEPT AS EXPRESSLY



PROVIDED HEREIN, 1000KELVIN DOES NOT PROVIDE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE WEBSITE, SERVICES, PARTS, OR ANY MATERIALS PROVIDED BY 1000KELVIN HEREUNDER, AND DOES NOT WARRANT THAT THE PART WILL MEET YOUR REQUIREMENTS OR THE REQUIREMENTS OF ANY CERTIFICATIONS PROVIDED, OR BE WILL BE MERCHANTABILITY OR FIT FOR YOUR PARTICULAR PURPOSE.

6.2. Specifications Warranty; Remedy. 1000Kelvin represents and warrants for a period of three

(3) business days following the delivery of the Part (the "**Warranty Period**"), that the Part shall conform to the Specifications for such Part. In the event You notify 1000Kelvin during the Warranty Period that the Part fails to comply with the applicable Specifications in all material respects, 1000Kelvin will, as Your sole and exclusive remedy, replace such non-conforming Parts at 1000Kelvin's sole cost and expense, provided (i) You return the non-conforming Part(s) to 1000Kelvin within three (3) business days of your notice of non-conformance, and (ii) 1000Kelvin reasonably confirms such non-conformity. No returns will be accepted by 1000Kelvin unless You have notified 1000Kelvin within the Warranty Period. If You fail to contact 1000Kelvin within the Warranty Period, 1000Kelvin shall have no further obligations with respect to such Part and ALL SALES WILL BE DEEMED FINAL AND SUCH PARTS MAY NOT BE RETURNED TO 1000Kelvin.

7. INTELLECTUAL PROPERTY

7.1. License. Subject to the terms herein, 1000Kelvin grants to You a limited, revocable, non-exclusive license to use the Website for your personal or internal business purposes. 1000Kelvin and its licensors retains all ownership and intellectual property rights to the Website and all content therein. You shall not or permit any third party to:

(i) reverse engineer, disassemble or decompile the Website, the pricing and matching algorithms of 1000Kelvin, or 1000Kelvin's geometry parsing engine;

(ii) use any manual or automated software devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools or the like) to "scrape" or download data from any web pages contained in the Website;

(iii) access the Website in order to build a similar or competitive website, application or service;

(iv) except as expressly stated herein, no part of the Website may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means;

(v) use the Website for any illegal or illicit purpose, including to manufacture certain products, components, goods or tools designed or intended for use in firearms;

(vi) Send, upload, collect, transmit, store, use, post, publish, or otherwise communicate on the Website any data, information, pictures, videos, music or other materials or content that: (a) contains any computer viruses, worms, malicious code, or any software intended to damage or

alter a computer system or data; (b) You do not have the lawful right to send, upload, collect, transmit, store, use, post, publish, or otherwise communicate; (c) is false, intentionally misleading, or impersonates any other person, including reviews that are not representative of your experience; (d) is libelous, slanderous, defamatory, bullying, harassing, abusive, threatening, vulgar, obscene, or offensive, or that contains pornography, nudity, or graphic or gratuitous violence, or that promotes violence, racism, discrimination, bigotry, hatred, or physical harm of any kind against any group or individual; (e) is harmful to minors in any way or targeted at minors; (f) infringes, violates or otherwise misappropriates the intellectual property or other rights of any third party (including any moral right, privacy right or right of publicity); or (g) encourages any conduct that may violate any applicable laws or would give rise to civil or criminal liability;

(vii) Share, transfer or otherwise provide access to an account designated for You to another person;

(viii) Misuse the 1000Kelvin domain or use the 1000Kelvin trademark;

(ix) Disable, overly burden, impair, or otherwise interfere with servers or networks connected to the Website (e.g., a denial-of-service attack); or

(x) Gain unauthorized access to the Website or otherwise circumvent or violate the security of the Website, including without limitation: (a) accessing content that is not intended for You; (b) attempting to breach or breaching Website security or authentication measures; (c) restricting, disrupting or disabling service to Website users, hosts, servers or networks by any means, or (d) otherwise attempting to interfere with the proper working of the Website, including but not limited to by introducing any material that is malicious or technologically harmful.

Without limiting the foregoing, You acknowledge and agree that the pricing and matching algorithms, processes and mechanisms used by 1000Kelvin, along with 1000Kelvin's geometry parsing engine are the proprietary information and trade secrets of 1000Kelvin. In the event You attempt to reverse engineer such pricing and matching algorithms, processes and/or mechanisms, or 1000Kelvin's geometry parsing engine, Your right to use the Website and Service shall immediately cease, and 1000Kelvin will take any action it deems necessary or appropriate to protect its rights and interests.

7.2. Trademarks. The Website contains names, which are trademarks, service marks and/or brand names of 1000Kelvin and may not be used without the written permission of 1000Kelvin. Other trademarks, service marks and trade names that may appear on or in the Website are the property of their respective owners.

7.3. Your Content. 1000Kelvin does not claim any ownership over Your Specifications or any content, data or other materials You upload to or otherwise make available on the Website ("**Your Content**"). You are solely responsible for the Content that You upload to the Website. You hereby grant 1000Kelvin a non-exclusive, perpetual, royalty free, fully paid-up, sublicensable (to our

Partners), right and license to reproduce and use Your Content for the purpose of designing, manufacturing and delivering Your Parts to You, and to provide You any other Services that You request. You may request the return or destruction of your Content at any time by written notice to 1000Kelvin, provided that 1000Kelvin may keep archival copies only to comply with applicable law or document retention policies. You further acknowledge and agree that 1000Kelvin may use Your Content on an aggregated and anonymized basis to improve the Website and Services, including without limitation, to improve our pricing algorithms and help manufacture Parts in a more efficient and expedient manner. By submitting an order to 1000Kelvin, You represent and warrant that You are the owner and/or You have obtained the rights necessary to grant 1000Kelvin granted herein use without any violation of any intellectual property rights, or payment by 1000Kelvin of any amounts to any third party. You further represent and warrant that Your Content does not infringe upon, misappropriate, or violate any third party's rights, including intellectual property, privacy and publicity rights. If 1000Kelvin, in its sole commercial discretion, determines that the Specifications You submit to the Website infringes upon the intellectual property rights of any third party, 1000Kelvin reserves the right to refuse to manufacture the Part(s) based on your Specifications. 1000Kelvin will use commercially reasonable efforts to protect the confidentiality of Your Content and to only share Your Content with third parties as reasonably necessary in connection with the provision of the Services or as otherwise permitted herein. Notwithstanding the foregoing, 1000Kelvin may disclose Your Content if required by law.

7.4 Your Data. If You use the Service, You agree that 1000Kelvin will be required to collect, use, and process data from Your organization for the purpose of providing the Services ("**Buyer Data**"), subject to our [Privacy Policy](#) and any applicable General Terms. You shall make available all billing and other required information and documentation in a format reasonably requested by 1000Kelvin. 1000Kelvin is not responsible for inability to perform the Services due to incorrect information, improperly formatted or corrupt files, viruses on media provided, or incompatible backup media or software. You shall maintain an accurate backup copy of all data provided to 1000Kelvin. You acknowledge that transferring Buyer Data in connection with the Services is subject to the possibility of human and machine errors, omissions, and losses, including inadvertent loss of data, or damage to media that may give rise to loss or damage. You are responsible to adopt reasonable measures to limit the impact of such problems.

With respect to Buyer Data, you represent, warrant, and covenant that:

- The provision of the Buyer Data to 1000Kelvin and 1000Kelvin's contemplated use thereof complies with all laws, and you have received all necessary third-party approvals and consents with respect to the Services; and
- The Buyer Data, and 1000Kelvin's use of the Buyer Data, does not and will not infringe or violate the intellectual property rights or other rights of any third party.

You shall exclusively own all Buyer Data. You hereby grant 1000Kelvin a non-exclusive, non-transferable, sublicensable, royalty-free, worldwide right to handle Buyer Data to: (i) provide

Buyer any Service, as defined herein and as set forth in any General Terms; (ii) generate aggregate data; (iii) sublicense solely to the extent necessary to in connection with the provision of the Services, including enabling other Partners to fulfill their obligations to 1000Kelvin and to You, subject to any General Terms, if applicable.

8. **INDEMNIFICATION BY YOU.** You agree to indemnify and hold harmless 1000Kelvin and its officers, directors, shareholders, agents, licensees, employees, successors and assigns, and Partners, from and against any and all damages, liabilities, awards, losses, costs and expenses including, without limitation, reasonable attorneys' fees and court costs: (i) arising out of any breach by You of any undertaking, warranty, representation or agreement contained herein; (ii) arising out of a claim that a Part manufactured by 1000Kelvin pursuant to an order hereunder violates any law, regulation or ordinance; (iii) arising out of a claim with respect to the Part (whether arising out of product liability, strict liability, negligence or otherwise), including claims related to any injury, death or damage to any person or property caused by the Part; or (iv) arising out of any claim that any Specification, infringes upon or violates any patent, trade secret, copyright, trademark, service mark, right of publicity or other right of any third party.

9. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY OTHERWISE PROVIDED HEREIN, THE PARTS MANUFACTURED BY 1000KELVIN PURSUANT TO AN ORDER SUBMITTED ON THIS WEBSITE AS WELL AS THE WEBSITE AND SERVICES, AND ALL INFORMATION AND CONTENT THEREIN, AND ANY OTHER MATERIALS PROVIDED BY 1000KELVIN, ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. 1000KELVIN EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE WEBSITE, SERVICES AND PARTS, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY AGAINST INTERFERENCE OR INFRINGEMENT. 1000KELVIN DOES NOT WARRANT THAT ANY SUCH PARTS OR THE USE OF THE WEBSITE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY ERROR OR DEFECTS WILL BE OR CAN BE CORRECTED. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, IN WHICH CASE SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO ALL USERS.

9.1. BECAUSE THE PARTS ARE BASED ON YOUR SPECIFICATIONS, 1000KELVIN MAKES NO WARRANTY, REPRESENTATION, OR CONDITION THAT: (1) THE PARTS WILL MEET YOUR USE REQUIREMENTS, (2) THE PARTS ARE FIT FOR ANY PARTICULAR PURPOSE, OR MERCHANTABILITY, OR (3) THE PART DESIGN IS DEFECT OR ERROR-FREE-.

9.2. THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. 1000KELVIN MAKES NO WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO THE SERVICES, INCLUDING BUT NOT LIMITED TO, THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF THE SERVICES.

9.3. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM 1000KELVIN OR THROUGH THE WEBSITE WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

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

9.5. YOU ACKNOWLEDGE AND AGREE THAT 1000KELVIN IS NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD 1000KELVIN LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING FOR ANY PART MANUFACTURED BY A THIRD PARTY.

10. LIMITATION OF LIABILITY

10.1. **Disclaimer of Certain Damages.** 1000KELVIN SHALL NOT IN ANY EVENT BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, OR FOR ANY LOSS OF PROFITS, REVENUES, BUSINESS OPPORTUNITIES OR FOR LOSS OF INCOME, BARGAIN, REVENUE, CONTRACTS, GOODWILL, USE, ENJOYMENT, TIME, DATA, OR ELECTRONICALLY TRANSMITTED ORDERS OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE OR EMOTIONAL DISTRESS, WHETHER OR NOT 1000KELVIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH: (1) THIS AGREEMENT OR THE USE OR INABILITY TO USE THE WEBSITE OR SERVICES; (2) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES RESULTING FROM ANY GOODS, PARTS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED THROUGH THE WEBSITE OR SERVICES; (3) ANY UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS, SPECIFICATIONS, TOLERANCES OR DATA; (4) YOUR PARTS; OR (5) ANY OTHER MATTER RELATED TO THE WEBSITE AND SERVICES, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY.

10.2. **Cap on Liability.** UNDER NO CIRCUMSTANCES WILL 1000KELVIN BE LIABLE TO YOU FOR MORE THAN THE AMOUNT RECEIVED BY 1000KELVIN FROM YOU UNDER A GIVEN ORDER FOR ANY CLAIM RELATING TO A GIVEN ORDER.

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

10.4. **Basis of the Bargain.** THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN 1000KELVIN AND YOU.

11. **RELEASE OF LIABILITY.** YOU ACKNOWLEDGE AND AGREE THAT THE PARTS AND THEIR MANUFACTURE, ARE BASED ON SPECIFICATIONS PROVIDED BY YOU. ACCORDINGLY,



YOU AGREE THAT UNDER NO CIRCUMSTANCE WILL 1000KELVIN BE LIABLE FOR ANY DAMAGE OR LIABILITY RESULTING FROM ANY PART, INCLUDING ANY PART DEFECT RESULTING FROM THE MANUFACTURE OF A PART IN ACCORDANCE WITH THE SPECIFICATIONS. You hereby release

1000Kelvin and its affiliates, and their officers, directors, employees, agents, consultants, and Partners and their successors from claims, demands, any and all losses, damages, rights, and actions of any kind, including personal injuries, death and property damage, that is either directly or indirectly related to or arises from Your Part(s), excluding any material defects in any Part(s) solely caused by the acts or omissions of 1000Kelvin. If you are a California resident, you hereby waive California Civil Code Section 1542, which states, "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor".

12. TERM AND TERMINATION

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

12.2. Termination of Services by You. Subject to the terms of Section 3.1, if You want to terminate the Services provided by 1000Kelvin, You may do so by (a) notifying 1000Kelvin at any time and (b) closing Your Account for all of the Services that You use. Your notice should be sent, in writing, to 1000Kelvin's address set forth below.

12.3. Termination of Services by 1000Kelvin. 1000Kelvin has the right to, immediately and without notice, suspend or terminate this Agreement or Your use of the Website and Services (with or without cause), including if 1000Kelvin becomes aware of any possible violations by You of this Agreement. In the event 1000Kelvin determines, in its sole discretion, that You have breached any portion of this Agreement, 1000Kelvin reserves the right to: (i) warn You via email (to any email address you have provided to 1000Kelvin) that You have violated this Agreement; (ii) delete 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 1000Kelvin deems to be appropriate.

12.4. Effect of Termination. Termination of any Service includes removal of access to such Service and barring of further use of the Service. Termination of all Services also includes deletion of Your password and all related information, files and Your Content associated with or inside Your Account. 1000Kelvin will not have any liability whatsoever to You for any suspension or termination, including deletion of Your Content. All provisions of this Agreement which by their nature should survive, shall survive termination of the Services, including without limitation, ownership provisions, warranty disclaimers, payment obligations, indemnification obligations and limitation of liability.

13 MISCELLANEOUS

13.1 Electronic Communications. The communications between You and 1000Kelvin use electronic means, whether You visit the Website or send 1000Kelvin e-mails, or whether 1000Kelvin posts notices on the Website or communicates with You via e-mail. For contractual purposes, You

(1) consent to receive communications from 1000Kelvin in an electronic form; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other communications that 1000Kelvin provides to You electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect Your statutory rights.

13.2 Linked Sites. The Website may provide links or access to third party content, websites, or services. 1000Kelvin does not endorse any third-party content, websites, services, or systems, or guarantee their quality, accuracy, reliability, completeness, currency, timeliness, non-infringement, merchantability, or fitness for any purpose. Third-party content, websites, services, or systems are not under 1000Kelvin's control, and if You choose to access any such content, websites, or services, or to access the Website from such systems, You do so entirely at Your own risk. You acknowledge that You may be required to accept terms of use applicable to third party content, websites, services, or systems and agree to accept and comply with any such terms of use.

The Website may integrate with social networking services. You understand that 1000Kelvin does not control such services and is not liable for the manner in which they operate. While we may provide You with the ability to use such services in connection with the Website, 1000Kelvin is doing so as an accommodation and, like You, is relying upon those services to operate properly and fairly.

13.3 Assignment. This Agreement, and Your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by You without 1000Kelvin's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

13.4 Force Majeure. Neither party shall be liable for any delay or failure to perform (excluding payment obligations) 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, pandemics, government-ordered shutdowns, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

13.5 Questions, Complaints, Claims. If You have any questions, complaints or claims with respect to the Website or Services, please contact us at: dataprotection@1000kelvin.com. We will do our best to address Your concerns. If You feel that Your concerns have been addressed incompletely, we invite You to let us know for further investigation.

13.6 Limitations Period. YOU AND 1000KELVIN AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE WEBSITE OR THE SERVICES MUST COMMENCE

WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

13.7 Arbitration Agreement; Class Waiver; Waiver of Trial by Jury. Please read this Section 13.6 (“**Arbitration Agreement**”) carefully. It is part of Your contract with 1000Kelvin and affects Your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASSACTION 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 1000Kelvin 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 1000Kelvin, 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 1000Kelvin should be sent to: dataprotection@1000kelvin.com. After the Notice is received, You and 1000Kelvin will attempt to resolve the claim or dispute informally. If You and 1000Kelvin do not resolve the claim or dispute within 30 days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

(c) **Arbitration Rules.** Arbitration shall be initiated through the American Arbitration Association (“**AAA**”), an established alternative dispute resolution provider (“**ADR Provider**”) that offers arbitration as set forth in this section. If AAA is not available to arbitrate, the parties shall agree to select an alternative ADR Provider. The rules of the ADR Provider shall govern all aspects of this arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with this Agreement. The AAA Commercial Arbitration Rules governing the arbitration are available online at www.adr.org or by calling the AAA at 1-800-778-7879. The arbitration shall be conducted by one to three, neutral arbitrators, at the discretion of 1000Kelvin. 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 1000Kelvin 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 1000Kelvin, 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 1000Kelvin.

(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 1000Kelvin in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND 1000KELVIN 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 BUYER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER BUYER 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 1000Kelvin is entitled to arbitration of such claim or dispute. Instead, all such claims and disputes will then be resolved in a court as set forth in Section 13.6(n).

- (i) **Severability.** If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.
- (j) **Right to Waive.** Any or all of the rights and limitations set forth in this Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or effect any other portion of this Agreement.
- (k) **Survival of Agreement.** This Arbitration Agreement will survive the termination of Your relationship with 1000Kelvin.
- (l) **Small Claims Court.** Notwithstanding the foregoing, either You or 1000Kelvin 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 Berlin for such purpose.

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

13.9 Independent Contractor. Your relationship to 1000Kelvin 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 1000Kelvin 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 1000Kelvin that is inconsistent with You being an independent contractor (and not an employee) of 1000Kelvin. You are not an agent of 1000Kelvin 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 1000Kelvin.

13.10 Notice. Where 1000Kelvin requires that You provide an e-mail address, You are responsible for providing 1000Kelvin with Your most current e-mail address. In the event that the last e-mail address You provided to 1000Kelvin is not valid, or for any reason is not capable of delivering to You any notices required/ permitted by this Agreement, 1000Kelvin's dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to 1000Kelvin



at the following address: Bismarkstraße 10-12, 10625 Berlin, Attn: Legal Dept. Such notice shall be deemed given when received by 1000Kelvin by letter delivered by nationally recognized overnight delivery service or first-class postage prepaid mail at the above address.

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

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

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