Purchase Order Terms and Conditions

Version Effective Date: April 25, 2024

Purchase orders issued by Midjourney Inc. ("Midjourney") to the seller referenced in the purchase order ("Seller") are made expressly subject to these Purchase Order Terms and Conditions ("Terms"). These Terms shall be incorporated into and made a material part of any purchase order issued by Midjourney. No Seller terms and conditions shall be binding upon Midjourney if in conflict with, inconsistent with, or in addition to the terms and conditions contained in these Terms. Any additional or differing terms proposed by Seller are objected to and rejected unless expressly agreed to in writing by Midjourney. If there are conflicting terms and conditions between these Terms and an additional valid agreement fully executed by both parties, then the terms in such an agreement shall prevail.

1. **Acceptance.** Seller accepts these Terms and agrees to be bound by the terms and conditions provided herein by issuing an order acknowledgement or confirmation, commencing performance, or shipping products in accordance with Midjourney's purchase order, whichever occurs first.

2. **Delivery, Title, and Risk of Loss.** Seller acknowledges that time is of the essence in the delivery of products or performance of services within the timeframe mutually agreed upon by Midjourney and Seller, and that failure to complete the delivery or services within such timeframe constitutes a breach of these Terms. Midjourney may terminate any order where delivery or performance is late or incomplete. Seller shall furnish all products sold to Midjourney F.O.B. Destination. As used herein, F.O.B. Destination means title to, and risk of loss, for any products sold to Midjourney shall pass to Midjourney only after unloading the products at the delivery location selected by Midjourney.

3. **Changes.** Midjourney reserves the right to modify the purchase order at any time prior to shipment with respect to quantities, method of delivery, delivery schedules, place of delivery, and specifications by issuing one or more change orders to Seller ("Change Order"). Seller shall not make any changes to purchase orders affecting the products or services without the prior written consent of Midjourney. If a Change Order causes an increase or decrease in price or the time required for performance, an equitable adjustment shall be made, and the purchase order shall be modified in writing accordingly.

4. Cancellations. Midjourney reserves the right to cancel a purchase order or any portion thereof, without liability to Seller, if: (a) Seller fails to deliver products or

perform services as specified by Midjourney, including failure to meet commitments as to time, price, quality or quantity; (b) Seller breaches any of the terms of the purchase order or these Terms; (c) Seller ceases to conduct its operations in the normal course of business; (d) proceedings are instituted against Seller under bankruptcy laws or any other laws related to the relief of creditors; (e) a receiver is appointed by Seller; or (f) any assignments are made by Seller for the benefit of creditors. Midjourney may also terminate all or any portion of a purchase order at any time prior to the scheduled delivery date, in which case the Seller shall be entitled to the reimbursement of direct, verifiable, and non-recoverable expenses incurred by Seller as a result of such cancellation. The payment required by the foregoing sentence shall constitute Midjourney's sole and exclusive liability and obligations with respect to cancellation of any order.

5. **Inspection & Rejection.** All products and services are subject to final inspection and acceptance by Midjourney at the delivery destination notwithstanding payment or passage of title. Such inspection will be made within a reasonable time after receipt of the products or services, and Midjourney will be deemed to accept such products or services unless it gives Seller written notice of any defect or non-conformity within a reasonable time after inspection. Failure to give notice of any defect or non-conformity shall not affect any warranty or operate as acceptance of any product or services with a latent defect. Midjourney shall notify Seller if any products or services are rejected, and at Midjourney's election and Seller's risk and expense, products shall be held by Midjourney or returned to Seller. Seller will not make any corrections or replace non-conforming goods unless agreed to in writing by Midjourney.

6. **Invoice, Disputes, and Payment.** Prices for the products and/or services will be set out in the applicable purchase order. Price increases or charges not expressly set out in the purchase order shall not be effective unless agreed to in writing by Midjourney. Seller will issue all invoices on a timely basis. Unless otherwise specified in the purchase order or agreed to in writing, payment terms are net thirty (30) days from receipt of an accurate and complete invoice. In the event Midjourney disputes any portion of the invoice, Midjourney will notify Seller of its dispute in writing within fourteen (14) days of receipt of the invoice, and such notice will contain the details of the dispute in reasonable specificity. Midjourney shall have the right to withhold payment of any invoiced amounts that are disputed in good faith until the parties reach an agreement with respect to such disputed amounts, and such withholdings shall not be deemed a breach of these Terms or incur late

payment or interest charges until the dispute is resolved. Notwithstanding the foregoing, Midjourney agrees to pay any undisputed amounts when due.

7. **Taxes.** Unless otherwise stated in the purchase order, all prices or other payments stated in the purchase order are exclusive of any applicable taxes. Seller shall separately itemize all applicable taxes on each invoice.

8. **Seller's Representations and Warranties.** Seller represents and warrants that: (a) Seller owns all rights, title, and interest in the products and services and has the legal authority to sell, license, or otherwise transfer the right to use or sell such items to Midjourney; (b) the products and services are of good and merchantable quality and free from defects in design, material, and workmanship, are safe and conform to applicable specifications, drawings, samples, descriptions, and associated documentation provided to Midjourney; (c) the products and services comply with all applicable international, federal, state, local laws, rules, and regulations; (d) the goods are fit for the intended purpose; (e) the products and services, or their sale or use will not infringe any third party patents, trademarks, copyrights, trade secrets, or similar intellectual property rights; (f) Seller will comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to its performance under the purchase order, including in the manufacture, procurement, transporting, or sale of any of the products or services rendered.

9. **Warranty Remedies.** If Seller breaches any of the warranties in Section 8, Midjourney may, at its election and in addition to any rights or remedies it may have, request a refund for the purchase price and return products to Seller, or require Seller to promptly replace or correct products or re-perform the affected services within fourteen (14) days after notice by Midjourney to Seller of warranty breach. All associated costs, including costs to return and replace the products and re-perform the services, will be borne by the Seller. If products are corrected or replaced or services are re-performed, the warranties in Section 8 will continue as to the corrected or replaced products and services.

10. **Confidentiality.** Seller agrees to protect all confidential information belonging to Midjourney and will not disclose any such information without Midjourney's prior written consent.

11. **Limitation of Liability.** EXCEPT FOR SELLER'S OBLIGATIONS UNDER SECTION 12, AND EXCEPT FOR DAMAGES THAT ARE THE RESULT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF EITHER PARTY, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY INDIRECT,

INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING ANY LOST PROFITS, DATA, GOODWILL, OR BUSINESS OPPORTUNITY FOR ANY MATTER RELATING TO THESE TERMS.

12. **Indemnification.** Seller shall release, defend, indemnify, and hold Midjourney, its directors, officers, employees, and agents harmless from and against any losses, liabilities, claims, damages, legal fees, costs, and expenses arising out of: (a) death, bodily injury, or loss or damage to real or tangible personal property resulting from the use of or any actual or alleged defect in the products or services, or from the failure of the products or services to comply with Seller's representations and warranties in Section 8; (b) any claims that the products or services infringe upon the intellectual property rights of any person; (c) any intentional, wrongful, or negligent act or omission of Seller or any of its subcontractors or affiliates; or (d) Seller's breach of any of its obligations under these Terms; provided, however, that Seller's obligations to indemnify Midjourney shall not apply to liabilities solely arising from Midjourney's negligence.

13. **Relationship of the Parties.** The relationship between Midjourney and Seller is solely that of independent contracting parties, and nothing in these Terms or any purchase order shall be construed to create an employment, joint venture, partnership, or agency relationship between Midjourney and Seller.

14. **Force Majeure.** Midjourney will not be liable or held responsible for any delays or losses related to Midjourney's failure to accept products or services that arise directly or indirectly from acts of God, severe weather conditions, labor disputes, governmental actions, war, riots, or other causes beyond the reasonable control of Midjourney. If Seller suffers a delay due to a force majeure event, Midjourney may terminate any purchase order where such delay exceeds or is reasonably likely to exceed thirty (30) days.

15. **Non-waiver.** No failure or delay by either party in exercising any rights, remedies, and authority under these Terms will constitute a waiver of that right. Any waiver must be in writing and be signed by each party.

16. **Assignment.** Seller shall not assign, delegate, or subcontract its performance under any purchase order or these Terms without the prior written consent of Midjourney, which Midjourney may withhold in its sole discretion.

17. Severability. If any provision of these Terms is determined to be unenforceable or invalid for any reason, in whole or in part, such invalidity or unenforceability shall

attach only to such provision or part thereof and the remaining part thereof and all other provisions shall continue in full force and effect.

18. **Survival.** Any provision of these Terms which expressly or by implication from its nature is intended to survive the termination or completion of these Terms will continue in full force and effect after any termination or expiration of these Terms.

19. **Governing Law.** The laws of the State of California shall govern these Terms without giving effect to the choice of law provisions thereof. Any action based on or arising out of these Terms shall be brought and maintained exclusively in any state or federal court located in the State of California. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to these Terms.