

**GENERAL TERMS AND CONDITIONS – SPARES & SERVICE (08/24)**  
**PROGRESSIVE SURFACE**

**ACCEPTANCE OF PROPOSAL; ACCEPTANCE OF ORDER**

Acceptance by *PROGRESSIVE SURFACE* of purchaser's order, or purchaser's acceptance of *PROGRESSIVE SURFACE'S* proposal, is expressly limited to, and conditioned upon purchaser's acceptance of, and assent to, the equipment and services as described in the proposal and the terms and conditions set forth herein. Any additional, inconsistent or different specifications or terms and conditions contained in purchaser's purchase order or any other documents submitted by purchaser to *PROGRESSIVE SURFACE* at any time, whether before or after the date hereof, shall not be binding on *PROGRESSIVE SURFACE* unless expressly agreed in writing by *PROGRESSIVE SURFACE*. Purchaser acknowledges that, notwithstanding anything to the contrary contained in its purchase order or other documents, receipt and acceptance by purchaser of *PROGRESSIVE SURFACE* equipment or services shall constitute acceptance by purchaser of these terms and conditions.

Upon receipt of purchaser's order, *PROGRESSIVE SURFACE*, at its sole discretion, shall evaluate the purchaser's financial condition and performance of payment to suppliers and creditors including past accounts with *PROGRESSIVE SURFACE*. The purchaser agrees to provide information, including but not limited to a completed credit application, requested by *PROGRESSIVE SURFACE* to determine to its satisfaction such financial condition and payment performance. Purchaser agrees that *PROGRESSIVE SURFACE'S* acceptance of the purchaser's order subsequent to this review may require a revision of payment terms, a letter of credit, a security agreement, or other such measure(s) as may be determined by *PROGRESSIVE SURFACE*.

Errors and omissions discovered in *PROGRESSIVE SURFACE'S* proposal are subject to correction by *PROGRESSIVE SURFACE*.

All orders are subject to acceptance by *PROGRESSIVE SURFACE*.

**LIMIT OF LIABILITY; CUSTOMER REMEDY**

IN NO EVENT SHALL *PROGRESSIVE SURFACE* BE LIABLE TO PURCHASER OR ANY OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR ANY OTHER SPECIAL DAMAGES, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING WITHOUT LIMITATION DAMAGES FOR INJURY TO PERSON OR PROPERTY, LOSS OF PROFITS OR REVENUE, LOST SALES OR LOSS OF USE OF ANY EQUIPMENT. THE PURCHASER'S SOLE AND EXCLUSIVE REMEDY AGAINST *PROGRESSIVE SURFACE* OR ITS SALES REPRESENTATIVE SHALL BE THE REPAIR OR REPLACEMENT OF DEFECTIVE PARTS AS PROVIDED HEREIN. *PROGRESSIVE SURFACE'S* LIABILITY ON ANY CLAIM, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THE PURCHASER'S ORDER, SHALL IN NO CASE EXCEED THE PURCHASE PRICE OF THE ORDER. The sole purpose of the stipulated exclusive remedy provided herein shall be to provide the purchaser with repair or replacement of defective equipment in the prescribed manner. The purchaser agrees to assist

*PROGRESSIVE SURFACE* and to hold *PROGRESSIVE SURFACE* harmless in effectuation of this provision.

Purchaser specifically acknowledges that dry collection of powders and dust creates a potential fire and explosion hazard and agrees to hold *PROGRESSIVE SURFACE* harmless for any costs or damages either direct or consequential that may arise from fires or explosions that may develop in any dust collection equipment that is furnished or recommended by *PROGRESSIVE SURFACE*.

**DELIVERY DATE**

The delivery dates listed in the proposal have been estimated based on conditions at the time of proposal. Purchaser must contact *PROGRESSIVE SURFACE* at the time of order to confirm current delivery projections. Shipping and services dates will be based upon prompt receipt of all necessary information and approvals by the purchaser. *PROGRESSIVE SURFACE* shall, in good faith, endeavor to ship and/or provide services by the projected date(s) but reserves the right to vary such date free of liability to *PROGRESSIVE SURFACE*.

**INSPECTION**

Purchaser shall inspect supplied equipment and/or services immediately on its arrival and shall, within thirty (30) days of the arrival date, give written notice to *PROGRESSIVE SURFACE* of any claim for shortage or that the equipment does not conform with the terms of the contract of sale. Purchaser shall inspect supplied services immediately on their completion and shall, within thirty (30) days of the completion date, give written notice to *PROGRESSIVE SURFACE* of any claim that the services did not conform with the terms of the contract of sale. If the purchaser fails to give such notice, the equipment or services shall be deemed accepted and to conform with the terms of the contract of sale and the purchaser shall be bound to pay for the equipment or services provided.

**WARRANTY**

*PROGRESSIVE SURFACE* warrants to the original purchaser that *PROGRESSIVE SURFACE'S* new equipment shall be free from defects in material and workmanship for the warranty period. The warranty period for components manufactured by *PROGRESSIVE SURFACE* shall be ONE YEAR from the date of shipment or 1200 hours of operation, whichever occurs first. *PROGRESSIVE SURFACE'S* obligation under this warranty is limited to repair, replacement, or modification of any part or parts which shall be returned to *PROGRESSIVE SURFACE* with transportation charges prepaid, and which *PROGRESSIVE SURFACE'S* examination discloses are defective.

Equipment supplied by *PROGRESSIVE SURFACE* but manufactured by others is warranted only to the extent of the equipment manufacturer's warranty, and only the remedies, if any, provided by the manufacturer will be allowed.

The warranty period for services provided by *PROGRESSIVE SURFACE* shall be ninety (90) days after completion of the services. *PROGRESSIVE SURFACE'S* obligation under this service warranty is limited to the re-performance of the non-conforming services.

This warranty does not apply to any equipment which *PROGRESSIVE SURFACE* determines (i) has been repaired or altered in any way by any party other than *PROGRESSIVE SURFACE*; (ii) has not been properly maintained; (iii) has been operated outside of normal limits; (iv) has been subject to other misuse, neglect, or accident; (v) has been operated with replacement parts not manufactured or approved by

*PROGRESSIVE SURFACE*; (vi) has been operated after discovery of a defect or necessary repair.

This warranty does not cover items that would normally be consumed or require replacement due to normal wear in use. No warranty is made with respect to used or refurbished equipment which, unless otherwise indicated in the proposal, shall be sold as is. These parts shall be replaced at the sole expense of the purchaser.

Repairs, replacements or re-performance of services pursuant to warranty shall not renew or extend the original equipment warranty period; provided, however, that any such repairs, replacements or re-performance of services shall be warranted for the time remaining of the original warranty period or 30 days, whichever is longer.

Charges for labor and/or parts incident to the removal and remounting of defective parts or equipment are the responsibility of the purchaser and are not covered by this warranty.

EXCEPT FOR THE EXPRESS WARRANTIES STATED ABOVE, *PROGRESSIVE SURFACE* EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OR OTHERWISE, WITH RESPECT TO ANY PRODUCT OR LABOR FURNISHED IN CONNECTION WITH THE SALE, DELIVERY OR SERVICING OF ANY EQUIPMENT. *PROGRESSIVE SURFACE'S* LIABILITY UNDER THIS WARRANTY IS LIMITED TO THE REPAIR OR REPLACEMENT OF DEFECTIVE PARTS, AND/OR THE RE-PERFORMANCE OF DEFECTIVE SERVICES, AS STATED HEREIN AND *PROGRESSIVE SURFACE* IS NOT LIABLE FOR ANY DELAYS, DAMAGES, EXPENSES, LOSS OF INCOME OR ANY OTHER CONSEQUENTIAL DAMAGES RESULTING FROM SUCH DEFECTS. THE EXPRESS WARRANTY STATED ABOVE IS THE SOLE AND EXCLUSIVE REMEDY OF PURCHASER AGAINST *PROGRESSIVE SURFACE*.

#### **FORCE MAJEURE**

*PROGRESSIVE SURFACE* shall have no responsibility for failure to perform hereunder or for any loss or damage due to causes beyond its reasonable control, including but not limited to acts of God, fires, civil disobedience, war, acts of terrorism, riots, strikes, work stoppages, floods, water and the elements, epidemics, governmental actions or orders, delays in transportation, unavailability of materials or changes in governmental requirements.

#### **CANCELLATION**

Any order or contract may be terminated by purchaser only upon written notice and payment of reasonable and proper termination charges, including but not limited to: (a) all costs and overhead expenses identified to the order incurred up to the effective date of notice of termination and (b) all charges incurred by *PROGRESSIVE SURFACE* in respect to the termination prior to the effective date of termination, plus (c) a fixed sum of 15% of the final net selling price of the order.

Additionally, purchaser shall promptly give written instruction to *PROGRESSIVE SURFACE* as to the disposition of the finished goods and *PROGRESSIVE SURFACE* shall, if requested, hold the goods for the purchaser's account for a reasonable period of time at the purchaser's sole expense including but not limited to all costs of storage, insurance, handling, boxing and any other costs in connection with such storage.

In the event of cancellation, *PROGRESSIVE SURFACE* shall also be entitled to all other applicable remedies under the Uniform Commercial Code or the laws of the State of Michigan.

#### **PAYMENT TERMS**

*PROGRESSIVE SURFACE'S* prices shown on the price page of the proposal are based on the specified terms of payment. Other terms of payment may result in price variations and are only acceptable with *PROGRESSIVE SURFACE'S* prior written consent. The final terms of payment, notwithstanding *PROGRESSIVE SURFACE'S* prior agreement to such, are subject to revision by *PROGRESSIVE SURFACE* based on *PROGRESSIVE SURFACE'S* initial or any subsequent evaluation of purchaser's financial condition and payment performance. In no event will prompt or early payment discounts be accepted. All payments are to be made in US dollars. No orders will be processed without payment if payment terms require partial payment with the purchase order. Purchaser shall pay an interest charge of 1.5% per month (18% per annum) to *PROGRESSIVE SURFACE* on all past due accounts. Additionally, *PROGRESSIVE SURFACE* reserves the right to delay equipment production, shipment or warranty response on all past due accounts until all past due amounts, including interest accrued in accordance with this paragraph, have been paid by purchaser.

Purchaser shall reimburse *PROGRESSIVE SURFACE* for any and all expenses, including reasonable attorney's fees, incurred by *PROGRESSIVE SURFACE* in the collection of any delinquent account or enforcing its rights with respect to purchaser.

#### **TAXES**

Sales, use, excise, property or any other like taxes or duties that may be levied on the sale of equipment, services or transportation quoted herein by local, state, federal or foreign governments are not included in quoted prices. Any such taxes or duties which *PROGRESSIVE SURFACE* may be obligated to pay shall be for the account of the purchaser, who shall promptly reimburse *PROGRESSIVE SURFACE* thereof.

#### **INTERNATIONAL SHIPPING**

Unless specifically stated in the proposal, *PROGRESSIVE SURFACE* is not responsible for any packaging, crating or preservation for overseas or air freight.

#### **INFRINGEMENTS**

The purchaser shall indemnify and hold harmless *PROGRESSIVE SURFACE* from all claims of infringement of any patent in the manufacture or sale of any item covered by this proposal when said item is made according to the drawings, samples, descriptions, or other information furnished by the purchaser. Purchaser shall defend, at its expense, any and all actions based on such claims of infringement.

## **RISK OF LOSS; TITLE**

All risk of loss or damage shall pass to the purchaser upon delivery of the equipment to the transportation carrier at *PROGRESSIVE SURFACE* plant when said transportation carrier is specified, provided or paid by the purchaser. In the event that *PROGRESSIVE SURFACE* specifies, provides and pays for transportation of equipment to a stated destination, all risk of loss or damage shall pass to the purchaser upon arrival of carrier to said destination. *PROGRESSIVE SURFACE* shall retain title to and a purchase money security interest in all equipment sold hereunder until the purchase price shall be fully paid to *PROGRESSIVE SURFACE*. Purchaser shall perform all acts that may be necessary to perfect and assure retention of title to the equipment by *PROGRESSIVE SURFACE* and if requested by *PROGRESSIVE SURFACE*, shall execute a security agreement and UCC financing statement covering the equipment.

## **PROPRIETARY INFORMATION**

This proposal and all notes, brochures, technical information concerning processes, devices, machines and techniques, agreements, know-how, designs, software, drawings, specifications, data sheets, correspondence or any like items (all hereafter designated "proprietary information") supplied to purchaser by *PROGRESSIVE SURFACE* are, and shall remain, the property of *PROGRESSIVE SURFACE* and may be covered by one or more *PROGRESSIVE SURFACE* patents, patent applications or copy rights. Purchaser shall not at any time disclose or make available to any third party for any purpose proprietary information without the express written consent of *PROGRESSIVE SURFACE*.

## **PURCHASE ORDER REQUIREMENTS**

*PROGRESSIVE SURFACE* requires a written Purchase Order to furnish any equipment or services. The following items must be included on the Purchase Order:

- a. The Purchase Order number.
- b. Reference to *PROGRESSIVE SURFACE*'S proposal number and date.
- c. The contract price and payment terms.
- d. The delivery date(s) of specified equipment and services.
- e. Shipping terms/requirements.
- f. Signature of an authorized representative of the company placing the order.

A written Purchase Order must be received at *PROGRESSIVE SURFACE* for all changes to the original contract of sale prior to shipment of equipment or dispatch of services.

## **INDEMNIFICATION OF PROGRESSIVE SURFACE**

Purchaser shall indemnify, defend, and hold *PROGRESSIVE SURFACE*, its agents and employees harmless from all claims, liabilities, and expenses, including but not limited to actual attorney fees, sustained by *PROGRESSIVE SURFACE* or its agents or employees that are caused by any action of purchaser relating to the goods or services sold by *PROGRESSIVE SURFACE* to purchaser.

## **CREDIT CARD PURCHASES**

Equipment and services can be purchased by credit card. In such cases the purchaser warrants that: (a) all credit card information

supplied is true, correct and complete; (b) purchaser is authorized to give credit card information and is authorized to use the credit card for the purchase of equipment and services; (c) all charges, prices and fees in connection with the transaction will be honored by its credit card company; (d) purchaser assumes the security risk for all credit information provided.

A written Purchase Order is not required for a credit card transaction. The contract of sale will be defined by *PROGRESSIVE SURFACE*'S proposal or order confirmation and the terms provided herein. *PROGRESSIVE SURFACE*, at its sole discretion, shall charge the credit card at any time after the receipt of order. If a credit card transaction is rejected when charged, *PROGRESSIVE SURFACE* is not obligated to ship equipment or dispatch service.

## **PURCHASER'S DEFAULT**

Purchaser is in default if any of the following occurs:

- a. Purchaser breaches, repudiates, or threatens to breach any term in the contract evidenced by this document or in any other agreement between purchaser and *PROGRESSIVE SURFACE*, including but not limited to a failure to pay all sums when due;
- b. Insolvency of purchaser or filing a voluntary or involuntary petition in bankruptcy with respect to purchaser;
- c. Appointment of a receiver or trustee for purchaser;
- d. Purchaser's credit becomes impaired; or
- e. Execution of an assignment for the benefit of creditors of purchaser.

## **PROGRESSIVE SURFACE'S REMEDIES**

In the event of purchaser's default, *PROGRESSIVE SURFACE* may exercise any remedies available under applicable law, including but not limited to the following remedies:

- a. *PROGRESSIVE SURFACE* may require payment in advance;
- b. *PROGRESSIVE SURFACE* may ship goods only via C.O.D.;
- c. *PROGRESSIVE SURFACE* may suspend performance or cancel all or any part of the balance of any contract with the purchaser;
- d. *PROGRESSIVE SURFACE* may reduce any unpaid debt of purchaser by enforcing its security interest, created hereby, in all goods (and proceeds therefrom) furnished by *PROGRESSIVE SURFACE* to purchaser;
- e. *PROGRESSIVE SURFACE* may take any other steps necessary or desirable to secure *PROGRESSIVE SURFACE* fully with respect to purchaser's payment for goods and services furnished or to be furnished by *PROGRESSIVE SURFACE* to purchaser; and
- f. Purchaser shall reimburse *PROGRESSIVE SURFACE* for all damages suffered due to purchaser's breach, including but not limited to incidental, consequential, and other damages, as well as lost profits, reasonable attorney fees, and court costs.

The remedies in this document shall be cumulative and in addition to any other remedies allowed to *PROGRESSIVE SURFACE* under applicable law.

**INSURANCE**

*PROGRESSIVE SURFACE* shall have no obligation to maintain insurance in excess of *PROGRESSIVE SURFACE'S* usual business needs as determined by *PROGRESSIVE SURFACE* in its sole discretion.

**INDEPENDENT CONTRACTOR**

*PROGRESSIVE SURFACE* shall at all times be deemed to be an independent contractor. Nothing herein shall be deemed to make *PROGRESSIVE SURFACE* or its employees or agents an employee, partner or joint venturer of purchaser.

**TIME FOR BRINGING ACTION**

Any action by purchaser against *PROGRESSIVE SURFACE* for breach of *PROGRESSIVE SURFACE's* obligations hereunder or for any other claim arising out of or relating to the goods or their design, manufacture, sale or delivery must be brought within one (1) year after the cause of action accrues.

**NO AUDIT RIGHTS**

Unless *PROGRESSIVE SURFACE* shall provide its prior written consent, which may be withheld by *PROGRESSIVE SURFACE* in its sole discretion, purchaser shall not, under any circumstances, have the right to conduct any audit or review of *PROGRESSIVE SURFACE's* corporate books, records or financial information.

**NON-WAIVER**

Failure by *PROGRESSIVE SURFACE* to enforce any rights under or to insist on strict performance of any provision in the proposal shall not constitute a waiver of any breach or a waiver of such provision, irrespective of the length of time for which such failure continues.

**SURVIVAL**

Notwithstanding any expiration or cancellation of purchaser's order, purchaser shall remain obligated under all those provisions of the proposal which expressly or by their nature extend beyond and survive such expiration or cancellation.

**SEVERABILITY**

If any provision or any portion of any provision in the proposal shall be held to be void or unenforceable, the remaining provisions hereof and the remaining portions of any provisions of the proposal held void or unenforceable in part shall continue in full force and effect.

**ASSIGNMENT**

Purchaser shall not assign its rights or delegate its duties under this document without *PROGRESSIVE SURFACE's* prior written consent. *PROGRESSIVE SURFACE* may assign to any third party its rights and obligations with respect to purchaser.

**CHOICE OF LAW**

This agreement shall be governed by the laws of the state of Michigan, but excluding provisions of the United Nations Convention on Contracts for the International Sale of Goods and excluding Michigan law with respect to conflicts of law. Purchaser agrees that all causes of action under this agreement shall be brought in the State Courts of the County of Kent, Michigan, or the U.S. District Court which serves Grand Rapids,

Michigan. Purchaser agrees that Grand Rapids, Michigan is both the place of making and the place of performance of this agreement.

**ENTIRE AGREEMENT AND AMENDMENT**

The entire agreement between *PROGRESSIVE SURFACE* and purchaser with respect to purchaser's order is embodied solely within this proposal. Purchaser shall advise *PROGRESSIVE SURFACE* immediately and specifically of anything herein which purchaser does not assent to as a term and condition governing the transaction covered herein. The contract evidenced by this document may be amended only by a writing signed by purchaser and an officer of *PROGRESSIVE SURFACE*.