

**PROGRESSIVE SURFACE, INC.**

**STANDARD TERMS FOR PURCHASES OF GOODS OR SERVICES**

1. Formation of Contract. The terms set forth in these Standard Terms for Purchases of Goods or Services, in any corresponding Progressive Surface, Inc. ("Buyer") Purchase Order, and in any corresponding Buyer Release(s) or Buyer Statement of Work/Request for Quotation (collectively, the "Order") are the sole terms for the purchase of goods and services by Buyer, and shall apply to the exclusion of any additional or different terms contained in Seller's quotation, proposal or acknowledgment, or otherwise proposed by Seller in any manner. Any acceptance by Seller of the Order is limited to and conditional upon Seller's acceptance of these express terms. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of these terms is hereby objected to and rejected. Any such proposal shall not operate as a rejection of the Order, unless the variances are in the terms of the description, quantity, price, or delivery schedule of the goods or services, but shall be deemed a material alteration. Accordingly, the Order shall be deemed accepted by Seller without such additional or different terms. If the Order shall be deemed an acceptance of a prior offer by Seller, the acceptance is expressly made conditional on assent to the terms of the Order and such acceptance is limited to those express terms. Additional or different terms in Seller's offer or any attempt by Seller to vary in any degree any of the Order terms shall be deemed material and are objected to and rejected. Seller's written acknowledgment of, commencement of work under, shipment of any goods or component parts of goods related to, or receipt or procurement of any materials related to the Order, whichever occurs first, shall be deemed as acceptance of the terms set forth in these Standard Terms For Purchases of Goods or Services

2. Invoicing; Payment and Price. All invoices must show the Order number. Invoices for accepted goods and services will be paid pursuant to the payment terms set forth on this Order. Payment periods and prompt payment discount periods will be computed from either the date of delivery or acceptance of the goods ordered (whichever is later) or the date of receipt of correct and proper invoices prepared in accordance with the terms of the Order, whichever is later. The payment date will be delayed on a day-for-day basis for any goods delivered later than called for by the schedule on the face of this Order. Payment does not constitute acceptance of goods or services. Pricing shall be as set forth in the Order and not be increased unless specifically authorized in writing by issuance of a revised Order signed by Buyer. Seller warrants that the prices charged Buyer and stated in this Order are no higher than prices charged by Seller to others for similar goods or services in similar quantities and conditions.

3. Taxes. No sales, use, excise or other taxes, whether federal, state or local, shall be added to the purchase price unless otherwise stated in this Order.

4. Shipping. Seller shall deliver to the specific location identified in the Order. Seller must include a packing list with all shipments. Seller's packing list must include Buyer's Purchase Order number and Part(s) numbers. Delivery shall be made in one shipment, unless otherwise specified by Buyer to Seller. Seller shall adhere to shipping directions specified on Buyer's releases. Seller acknowledges that time is of the essence and Seller shall notify Buyer immediately if Seller believes it cannot meet Buyer's delivery requirements. Buyer may from time to time change delivery schedules. Buyer shall not be liable for payment for goods delivered in

excess of the quantities or after the times specified in Buyer's delivery instructions to Seller. Unless otherwise stated in this Order, all shipments shall be DDP (Incoterms 2020) Buyer's location and shall be made at Seller's expense and risk of loss. Buyer shall have the right to instruct Seller on the method of shipment and packaging, which, if not specified, shall be in accordance with good commercial practice in a manner sufficient to ensure arrival in an undamaged condition. No charges will be allowed for boxing, crating, packing, or other preparation for shipment under the Order. In performing under the Order, Seller shall comply in all respects with all terms of the Buyer and any and all other requirements, including, but not limited to, any engineering requirements or labeling or barcode requirements that are included in or attached to the Order or the technical specifications attached to the Order, any of which requirements may be amended by Buyer from time to time.

5. Changes. Any agreed upon changes to the design (including drawings and specifications), processing, methods of packing and shipping, and the date or place of delivery of the goods covered by this Order shall not affect the time of performance or cost, unless Seller notifies Buyer in writing within ten (10) days of receipt by Seller of notice of any change. Without Buyer's prior written approval, Seller shall not change (a) any third-party supplier to Seller of services, raw materials, or goods used by Seller in connection with its performance under this Order, or (b) the nature, type, or quality of any services, raw materials, or goods used by Seller or its suppliers in connection with this Order.

6. Inspection of Goods; Samples. All goods and services described in this Order shall be subject to Buyer's inspection and approval. Buyer reserves the right to reject any nonconforming goods or services. Acceptance of any goods shall not relieve Seller from any of its other obligations under this purchase order. Seller shall provide samples in the amounts and at the times requested by Buyer.

7. Seller's Quality Control; Inspection of Seller. Seller agrees to establish and maintain quality control procedures to satisfy the requirements of Buyer and Buyer's customers, including but not limited to, all applicable automotive, aerospace, defense or other manufacturer standards and all applicable automotive, aerospace, defense or other industry standards. Buyer has the right to inspect Seller's facility, goods, materials and property covered by the Order periodically to determine Seller's compliance with applicable quality control standards.

8. Seller's Warranties. Seller expressly warrants to Buyer, its customers and assigns, that all the goods and services provided under this Order will (a) conform to the specifications, drawings, samples, representations and other descriptions of the goods and services specified by Buyer, or made by Seller, (b) will be of good material and workmanship, free from defects in material, design and workmanship, (c) will be merchantable and fit for the particular purposes of Buyer and its customers (to the extent Seller is on notice of those purposes); (d) will comply with all applicable laws and regulations, including but not limited to Seller's identification of any hazardous materials and Seller's providing to Buyer all applicable M.S.D.S. forms; and (e) that any tooling or dies sold or provided by Seller to Buyer will be capable of producing parts that are acceptable to Buyer and its customers. Seller further warrants to Buyer that none of the goods or services furnished under this Order are surplus, used, remanufactured or reconditioned or of such age or so deteriorated as to impair the usefulness or safety thereof, unless specifically stated on face of the Order. These warranties shall be in addition to any other warranty stated in this

purchase order or available to Buyer under applicable law and shall remain in effect for the longer of (i) the useful life of the goods and services, as determined by Buyer, in its sole discretion or (ii) the length of any warranty Buyer provides or is required to provide to its customer related to the goods or services or any goods or services which contain, in part, the goods or services provided for in this Order.

9. Indemnification of Buyer (General). Seller shall indemnify, defend, and hold Buyer and its agents harmless from all claims, liabilities, and expenses, including but not limited to actual attorney fees, sustained by Buyer or its agents that are caused by any action or omission of Seller with regard to this Order, including but not limited to defects in any goods or services supplied by Seller.

10. Indemnification of Buyer (Patents). Seller shall indemnify, defend, and hold Buyer and its agents harmless from any claims, liabilities and expenses, including but not limited to actual attorney fees, sustained by Buyer or its agents and arising out of any claim of infringement of a patent, copyright, trademark, trade name, or other proprietary right, or claim of unfair trade or of unfair competition, in connection with the manufacture, sale or use of the goods or services sold by Seller to Buyer, except to the extent that any claim, liability, or expense arises solely from Seller's compliance with specifications furnished by Buyer.

11. Confidentiality of Buyer's Information. Any information disclosed by Buyer to Seller is confidential and Seller agrees not to use or disclose any of that information (except as necessary to fulfill Seller's obligations under this purchase order) without Buyer's prior written consent.

12. Tools. All tools, jigs, dies, fixtures, patterns and equipment furnished to Seller by Buyer to perform the contract, or for which Seller has been reimbursed by Buyer, shall remain the property of Buyer ("Buyer's Tools"). Seller agrees that Buyer has the right at any time, with or without reason, and without payment of any kind to retake possession of or request return of any of Buyer's Tools. Seller waives any and all rights it may have to a security interest against Buyer's Tools, whether arising now or in the future, at any time or for any reason. Seller shall maintain property damage insurance on Buyer's Tools covering the period when Buyer's Tools are in the Seller's possession. Seller shall keep Buyer's Tools in reasonable repair. Seller shall return to Buyer all of Buyer's Tools immediately upon completing the manufacture of the goods. All shipping charges for Buyer's Tools shall be Buyer's responsibility. Risk of loss during shipment shall be on Buyer.

13. Seller's Default. Seller is in default if any of the following occurs (each, a "Seller Default"):

- (a) Seller breaches, repudiates, or threatens to breach any term in the contract evidenced by this Order or in any other agreement between Seller and Buyer;
- (b) Insolvency of Seller or filing of a voluntary or involuntary petition in bankruptcy with respect to Seller;
- (c) Appointment of a receiver or trustee for Seller; or

- (d) Execution of an assignment for the benefit of creditors of Seller.

14. Buyer's Remedies. In the event of a Seller Default, Buyer may exercise any remedies available under applicable law, including but not limited to:

- (a) Seller's immediate correction, repair, or replacement of the goods and services at Seller's expense;
- (b) Buyer may suspend payments, suspend performance, or cancel all or any part of the balance of any contract with Seller; and
- (c) Seller shall reimburse Buyer for all damages suffered due to Seller's breach, including but not limited to incidental, consequential and other damages, as well as lost profits, actual attorney fees, and court costs.

The remedies in this Order shall be cumulative and in addition to any other remedies allowed to Buyer under applicable law. No waiver by Buyer of any breach or remedy shall be a waiver of any other breach or remedy.

In the event Seller is not in default, Buyer may cancel any contract evidenced by this Order at any time as to all or any part of the undelivered goods or services by giving written notice to Seller. On such cancellation, Buyer will reimburse Seller only for the Seller's actual cost of labor and materials for producing goods under this Order incurred by Seller before Buyer notifies Seller of cancellation, less any net recovery to Seller on disposition or other use of the materials or goods. Seller shall use its best efforts to mitigate its damages under this section. Upon receipt of notice of cancellation, Seller, unless otherwise directed in writing by Buyer, shall (a) terminate immediately all work under this Order; (b) transfer title and deliver to Buyer the finished work, the work in process, and the parts and materials that Seller produced or acquired in accordance with this Order and that Seller cannot use in producing goods for itself or for others; (c) settle all claims by subcontractors approved by Buyer for reasonable costs that are rendered unrecoverable by the cancellation; (d) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest; and (e) cooperate with Buyer in resourcing of Seller's goods or services covered by this Order to a different supplier designated by Buyer.

15. Limitation on Seller's Remedies. If Buyer breaches any term in this Order, Buyer shall not be liable for any incidental, consequential, indirect or any other special damages of Seller, including but not limited to lost profits or Seller's attorney fees. Any action against Buyer arising out of this Order must be filed within one (1) year after the claim accrues.

16. Insurance. Seller will maintain and carry liability insurance which includes but is not limited to commercial general liability (including product liability and for services to be performed, completed operations liability) in a sum no less than \$5 million, automobile liability in a sum no less than \$5 million, workmen's compensation in an amount no less than the applicable statutory minimum requirement and employer's liability in an amount of no less than \$1 million, with insurance carriers acceptable to Buyer. Seller will, if requested by Buyer, furnish certificates of insurance from its carrier(s) on the foregoing coverages, which shall provide that such coverage shall not be changed without thirty (30) days advance written notification to Buyer from the carrier(s). Seller's purchase of insurance coverage and the furnishing of certificates of insurance

shall not release Seller of its obligations or liability under this Agreement. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services and shall not be required to make further payments except for conforming goods or services delivered prior to cancellation.

17. Independent Contractor. The relationship of Seller to Buyer is that of an independent contractor, and nothing contained in this Order or otherwise shall be deemed to create any other relationship, including employment, partnership, agency or joint venture, between Seller and Buyer. Seller shall not have any authority to employ any person as agent or employee for or on behalf of Buyer, or to bind, or attempt to bind, Buyer to any obligation with any third party. Seller has and retains full control and supervision over the performance of its obligations hereunder and over the employment, direction, compensation and discharge of all employees, agents and subcontractors it utilizes in the performance of such obligations. Seller is and shall be responsible for its acts and omissions and those of its employees, agents and subcontractors and Buyer shall have no obligation to any such employees, agents or subcontractors of Seller, except as specifically set forth in this Order.

18. Personnel Qualification. Seller shall ensure that its employees or representatives involved in the performance of this Order shall be appropriately qualified, skilled (including technical knowledge and language) and experienced in their respective trades or occupations. Seller shall ensure that its personnel and representatives shall, when located in the premises of Buyer or Buyer's customer, comply with any applicable regulations including but not limited to health, safety, security, environmental and internal regulations.

19. General.

- (a) Compliance with Laws. Seller warrants that it is and will remain in compliance with all federal, state and local laws, regulations, Executive Orders and ordinances, including, but not limited to, any applicable foreign laws, regulations, Executive Orders and ordinances, OSHA, TSCA, FLSA, and the Clean Air Act, relating in any way to Seller's ability to perform its obligations under this Order.
- (b) Compliance with Buyer's Supplier Code of Conduct. Seller warrants that it is and will remain in compliance with the commitments made in Progressive's Supplier Code of Conduct which is available on Buyer's website.
- (c) Equal Opportunity Employer. Buyer is an Equal Opportunity/Affirmative Action Employer, and does not discriminate with regard to race, religion, gender, age, national origin, disability, or status as a Vietnam-era veteran. In accordance with Federal Law, Seller is required to take appropriate action to implement an Equal Opportunity Policy.
- (d) Setoff. Buyer has the right to deductions or setoffs of any sums due to Buyer from Seller (whether or not arising from this Order) against any sums due to Seller from Buyer (whether or not arising from this Order).

- (e) Assignment. Seller shall not assign its rights or delegate its duties under this Order without Buyer's prior written consent. Buyer may assign to any third party its rights and obligations under this Order.
- (f) Entire Agreement and Amendment. This Order contains all of the terms of the agreement between Seller and Buyer with regard to its subject matter and supersedes all prior oral or written representations, agreements, and other communications between Seller and Buyer. The contract evidenced by this Order may be amended only by a writing signed by Seller and an officer of Buyer.
- (g) Severability. All terms shall be enforced only to the maximum extent permitted by law. If any term is invalid or unenforceable, all other terms shall remain in effect.
- (h) Survival. These Terms for Purchases of Goods or Services, and specifically Sections 8, 9, 10, 11, 12, 15, 16 and 19 hereof, shall survive termination or completion of Seller's performance of this Order and shall remain binding on Seller notwithstanding Seller's completion of its performance under this Order.
- (i) State Law. The sale of goods and services in accordance with this Order shall be governed in all respects by the laws of the State of Michigan.
- (j) Jurisdiction and Venue. Seller and Buyer agree that any action arising out of the sale of goods or services in accordance with this Order will be brought, heard, and decided in Kent County, Michigan. Seller submits to personal jurisdiction in Michigan.