

## Retailer Terms and Conditions

These terms and conditions (the "Agreement") are a legal agreement between the retailer ("you" or "Retailer") and Prog Leasing, LLC, its affiliates, subsidiaries, and divisions (collectively "we," "us," "our," or "Progressive"). These Terms apply to your use of our websites, extensions, plugins, application programming interfaces, and any other services provided by us that permit you to, among other things, market to end users or submit lease applications from end users to us (collectively, the "Services").

Progressive makes available, and Retailer wishes to utilize through the Services, a lease-purchase program ("Program") pursuant to which: (1) Retailer will sell to Progressive certain consumer goods ("Merchandise"); and (2) Progressive will then lease the Merchandise under leases with purchase rights ("Leases") to consumers ("Lessees") who do not wish to purchase Merchandise from Retailer outright. Leases will afford Lessees the right to acquire the leased Merchandise by paying a specified number of periodic payments or by paying an acquisition price during the Lease term.

### **1. Entry Into Leases.**

- a. The form and substance of each Lease will be determined by Progressive. Prior to the origination of any Lease, Retailer may display Progressive marketing materials at its storefronts and/or on its websites and will provide to consumers who wish to apply for a Lease (each, an "Applicant") any disclosures and application materials provided by Progressive for such purpose. Retailer will not use any form of Lease, promotional materials, disclosures and/or application materials concerning Leases that have not been provided or approved by Progressive.
- b. If an Applicant wishes to enter into a Lease, Retailer will provide the Applicant access to a Lease application (the "Application") via a web-based portal (the "Portal") and permit the Applicant to complete and electronically submit the Application to Progressive.
- c. Upon receipt of the Application, Progressive will communicate to Retailer, Applicant, or both, through the Portal Progressive's decision whether or not it is willing to enter into the Lease or, in some instances, Progressive may designate an Applicant as "pre-approved" and request additional information before reaching a final decision. Progressive may either enter or decline to enter into any proposed Lease in its absolute discretion. In the event that Progressive declines to enter into the Lease, it will provide notice on the Portal and generate and provide to the Applicant any required notice of the denial. If an Applicant is approved, the approval notice will indicate the amount of the approval.
- d. For in-person applications, if an Applicant is approved or pre-approved, Retailer will inspect the Applicant's driver's license or other government-issued photo identification card and confirm that the name on the Application/approval notice matches the identification. If it does not, Retailer will contact Progressive before proceeding further.
- e. If an Applicant is approved, and the identification of the Applicant is confirmed as set forth in the preceding subsection, Retailer will provide, through the Portal, a description of the Merchandise to be leased, including (a) any identification number for each item of Merchandise, (b) the invoice price ("Invoice Price") for each such item (which Invoice Price will be the lowest price at which Retailer would sell such item to the Applicant for cash at the time the Invoice Price is provided) and (c) whether the Merchandise is new or used and, (A) if new, the model year, if any and (B) if used, the model year, if any, or age of the Merchandise, if known. The minimum Invoice Price is \$300.00.
- f. Upon receipt of Retailer's description of the Merchandise, Progressive will send an email to the Applicant, using the email address provided on the Application, containing a link to an electronic version of a completed Lease for the Merchandise the Applicant wishes to lease. The Lease will be signed electronically by

Progressive. The Applicant will then have the opportunity to execute the Lease online, using either the Applicant's own device or an internet-enabled device Retailer provides. For in-person applications, and upon request of an Applicant or a Lessee, Retailer will deliver a paper copy of the Lease in its then current form (executed or partly executed).

- g. Upon Lease execution, Progressive will, using the payment card information provided by Applicant, process the initial payment as set forth in the Lease. If the payment clears, Retailer will receive confirmation through the Portal that the transaction is complete and the Merchandise may be delivered to Lessee. If Retailer receives notification that the payment could not be processed, the Merchandise should not be delivered to the Lessee, as processing of the initial payment is required for the Lease to be valid and for Retailer to receive payment from Progressive. If the Lessee or Retailer believes there has been an error in processing of the card, Retailer must contact Progressive to determine if the situation can be resolved.
- h. Retailer will not enter into any additional or side agreement with Lessee concerning the Lease or the Merchandise and will not allow, consent to, or accept any departure from the terms of the Lease.
- i. Retailer will not include an extended service contract and warranty ("Service Plan") with any Lease unless and until the Service Plan has been approved in writing by Progressive's legal department, and with the condition that, upon approval: (1) Retailer not offer or sell the approved Service Plan under the Program with Progressive in California, Indiana, or New York, and (2) any Lease including the approved Service Plan contain the related Merchandise together on the same Lease.

**2. Purchase Price; Progressive Payment to Retailer for Leased Merchandise.**

- a. The purchase price of Merchandise sold by Retailer to Progressive for purposes of a Lease under the Program will equal the Invoice Price of such Merchandise.
- b. Except where prohibited by law, purchases of Merchandise by Progressive will be exempt from sales tax. Progressive will provide to Retailer appropriate certificates evidencing such exemption and will maintain its exempt status at all times. Progressive will calculate, collect and remit applicable sales tax on all Lease payments. Retailer shall assist Progressive with sales tax audits by any applicable regulatory agency.
- c. Within three (3) business days after receiving (i) a Lease, electronically signed by the Lessee, and (ii) confirmation of delivery of all Merchandise to Applicant, Progressive will deposit to a bank account designated by Retailer (the "Deposit") an amount equal to the Invoice Price of the Merchandise subject to Lease. Retailer agrees not to submit an invoice to Progressive for funding unless the Merchandise has been delivered into Lessee's actual possession.
- d. The parties agree to notify each other promptly of any funding errors and to adjust the same within three (3) business days after notification from the other party, regardless of when such funding error occurred.
- e. All Leases will be non-recourse to Retailer.

**3. Payments on Contracts.** Progressive will have the exclusive right to collect and receive all payments made by Lessee, or anyone making a payment on behalf of Lessee, on each Lease. Retailer agrees to assist Progressive in giving notice to Lessee of the place for payment and to ensure that all payments on Leases are remitted directly to Progressive. Retailer will not accept any payment attempted to be made in person by any Lessee on a Lease.

**4. Representations, Warranties and Covenants of Progressive.** Progressive represents, warrants, and covenants to Retailer that:

- a. This Agreement has been properly authorized and executed by Progressive and, subject to Retailer's proper authorization and execution of this Agreement, constitutes the legally binding obligation of Progressive.
- b. Progressive will determine the form and content of each poster, brochure, advertisement, disclosure, application, Lease, and other document required under the Program. Progressive will ensure that all such

materials, if used by Retailer in accordance with the Policies and Procedures, will comply with all applicable consumer leasing laws.

- c. Progressive has in effect and will continuously maintain in effect all licenses, permits, registrations, notifications, and approvals necessary for Progressive to conduct its business.
- d. There is no pending litigation against Progressive that would materially affect Progressive's ability to perform its obligations under this Agreement.
- e. Progressive will provide Retailer, Applicants, and Lessees with call center services as needed and will provide Retailer sales and procedural training pertaining to the Program.

**5. Representations, Warranties and Covenants of Retailer.** Retailer represents, warrants, and covenants to Progressive that:

- a. This Agreement has been properly authorized and executed by Retailer and, subject to Progressive's proper authorization and execution of this Agreement, constitutes the legally binding obligation of Retailer.
- b. The Merchandise description provided by Retailer in connection with each Application will be accurate, true, and complete, and both Progressive and each Lessee entering into a Lease with Progressive will be entitled to the benefits of any manufacturer's or other warranty applicable to the Merchandise.
- c. Retailer and its employees will not make any misrepresentation or deceptive or misleading statement concerning any item of Merchandise, any Lease, or the Program; provided, however, that Progressive and not Retailer will be liable for any violation of Section 4(b).
- d. Subject to Progressive's compliance with Section 4(b), Retailer will not violate any applicable Federal, State or local law or regulations in connection with the Program.
- e. Retailer has in effect and will continuously maintain in effect all licenses, permits, registrations, notifications, and approvals necessary for Retailer to conduct its business.
- f. There is no pending litigation against Retailer that would materially affect Retailer's ability to perform its obligations under this Agreement.
- g. The financial and other information supplied to Progressive by Retailer contains no untrue statement of a material fact and omits no material fact necessary in order to make the statements contained therein not misleading.
- h. Retailer will, at all times, keep proper books of record and account in which full, true, and correct entries are made of all dealings, sales, and transactions in relation to its business and the Program. Retailer will permit any authorized representative of Progressive to examine its accounts and records and consult with its personnel, all at reasonable times and upon reasonable notice, to the limited extent reasonably required to verify the accuracy of information provided by Retailer to Progressive and the compliance of Retailer with its obligations under this Agreement.
- i. Retailer has not, nor will not, do anything to discharge or modify the obligations of the Lessee under any Lease or to interfere with the collection of the sums due thereunder. Retailer will not induce nor encourage any Lessee to terminate any Lease and will not take any action likely to result in such termination.
- j. After Retailer has received funding on a Lease, any Lessee's inquiries concerning the Lease will be directed by Retailer to Progressive's customer service. Retailer will not advise Lessees on the legal terms of a Lease nor offer Lessees alternative finance on the Merchandise after it has been leased from Progressive.
- k. Retailer shall comply with all requirements, policies, and procedures (including any instructions for inputting data in connection with Applications and the origination of Leases) located at <https://legal.progleasing.com/retailers.html#retailer-procedures>, as such documents may be modified in good faith by Progressive from time to time in its absolute discretion.

- I. Retailer shall provide to Progressive any copies of complaints received from consumers within a reasonable time period of receipt. Upon receipt of any actual or threatened legal claim relating to the Program, Retailer shall promptly notify Progressive in writing and provide Progressive copies of all relating documentation.
6. **Events of Default.** It will be an event of default if any party to this Agreement:
    - a. Ceases doing business; or
    - b. Makes an assignment for the benefit of creditors; has a receiver appointed for it or its assets; is the debtor in any petition in bankruptcy filed by or against it; or becomes unable to pay its debts as they become due in the ordinary course of business; or
    - c. Is in material breach of any representation, warranty, covenant, or obligation hereunder.
  7. **Remedies Upon Default.** Upon the occurrence of an event of default, the non-defaulting party will have the following rights and remedies, any or all of which may be exercised without notice, in any order, and without prejudicing its right to any other remedy:
    - a. To offset against any funds otherwise due any amounts owed under this Agreement; and
    - b. To require the direct payment in cash of all amounts due under this Agreement; and
    - c. To exercise any and all other remedies, legal and equitable, available under this Agreement, applicable law, or both; and
    - d. To immediately terminate this Agreement; and
    - e. To discontinue purchasing or selling Merchandise and/or entering into or facilitating Leases hereunder.
  8. **Exercise of Remedies.** No right or remedy conferred upon either party is intended to be exclusive of any other right or remedy contained in this Agreement or in any other instrument or document delivered pursuant to this Agreement, and every such right and remedy will be cumulative and will be in addition to every other such right or remedy contained herein or therein, or now or hereafter existing at law or in equity or by statute or otherwise. No failure or delay on the part of either party in exercising any rights or remedies under this Agreement will operate as a waiver of any rights or remedies, and no single or partial exercise of any rights or remedies under this Agreement will operate as a waiver or preclude the exercise of any other rights or remedies under this Agreement.
  9. **Disclaimer of Warranties; Limitation of Liability.** *Except as expressly provided in this Agreement, Progressive does not make and hereby disclaims any additional warranty, express or implied, with respect to the Program, including any warranty of merchantability, fitness for a particular purpose, or non-infringement. In no event shall Progressive be liable for any indirect, punitive, incidental, or consequential damages, however arising, incurred by Retailer.*
  10. **Assignment.** This Agreement inures to the benefit of and is binding upon the parties and their successors in interest by way of merger, acquisition, or otherwise, and their assigns. Retailer may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Progressive. Any such assignment in violation of this provision will be null and void. Progressive may assign its rights and obligations hereunder.
  11. **No Partnership, Agency or Joint Venture.** Nothing in this Agreement will be construed to create a relationship between the parties of partnership, principal-agent, or joint venture.
  12. **Confidentiality.**
    - a. Retailer will maintain the confidentiality of all nonpublic information concerning Lessees or Applicants, distribute notices as required by the policies and procedures mentioned in 5(k), above, and avoid any action that would cause Progressive to fail to comply with privacy or notice requirements.
    - b. Retailer acknowledges that it may have access to confidential information of Progressive relating to Progressive's business including, without limitation, technical, financial, strategies and related information,

computer programs, algorithms, know-how, processes, ideas, inventions (whether patentable or not), schematics, product information, pricing information, product development plans, forecasts, and other business information, whether in writing or not ("Confidential Information"). Retailer acknowledges that the terms of this Agreement are Progressive's Confidential Information. Confidential Information shall not include information that: (i) is or becomes (through no improper action or inaction by the Retailer) generally known to the public; (ii) was in the Retailer's possession or known by it prior to receipt from Progressive; (iii) was lawfully disclosed to Retailer by a third-party and received in good faith and without any duty of confidentiality by the Retailer or the third-party; or (iv) was independently developed without use of any Confidential Information. Retailer agrees not to divulge any Confidential Information or information derived therefrom to any third-party and shall protect the confidentiality of the Confidential Information with the same degree of care it uses to protect the confidentiality of its own confidential information and trade secrets, but in no event less than a reasonable degree of care. Notwithstanding the foregoing, the Retailer may disclose Confidential Information solely to the extent required by subpoena, court order, or other governmental authority, provided that the Retailer shall give Progressive prompt written notice of such subpoena, court order, or other governmental authority so as to allow Progressive to have an opportunity to first obtain a protective order to prohibit or restrict such disclosure at its sole cost and expense. Confidential Information disclosed pursuant to subpoena, court order, or other governmental authority shall otherwise remain subject to the terms applicable to Confidential Information. Retailer's obligations with respect to Confidential Information shall continue for the term of this Agreement and for three (3) years thereafter.

- c. Notwithstanding anything to the contrary in this Agreement (including Section 13), if the Parties have entered into a fully executed confidentiality agreement, such agreement shall be incorporated herein and shall remain in full force and effect. To the extent that any conflicts or inconsistencies arise between the terms of this Agreement and such confidentiality agreement, the terms most protective of a party's Confidential Information shall control.

13. **Entire Agreement.** This Agreement amends and restates any prior retailer or merchant agreement of the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, relating to the subject matter hereof are superseded. No modification to this Agreement is effective unless it is in writing, identified as a modification to this Agreement, and signed by an authorized representative of each party to this Agreement. No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement, and signed by an authorized representative of the party waiving its right. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege, or condition arising from this Agreement: (i) any failure or delay in exercising any right, remedy, power, or privilege, or in enforcing any condition under this Agreement; or (ii) any act, omission, or course of dealing between the parties.
14. **Term and Termination.** This Agreement shall continue until terminated by either Retailer or Progressive upon written notice to the other, but such termination will not affect the rights or obligations of either party relating to Leases and transactions effected prior to the effective date of such termination.
15. **Returns and Exchanges.** Retailer must provide Lessees with the same terms for the return or exchange of Merchandise as the Retailer provides to its other customers. Retailer will provide notice of any exchange or return to Progressive, including a detailed description of each item of Merchandise returned to the Retailer, within ten (10) days. Retailer will return to Progressive (by direct payment or netting of obligations between Retailer and Progressive) all amounts received by Retailer on the initial purchase of the Merchandise by Progressive (net funding from Progressive). Retailer shall not permit a Lessee to perform an exchange for a product costing more than the original Merchandise. Instead, the Retailer shall perform a return of the Merchandise, and shall require the customer to apply for and enter into a new agreement for the larger amount, if approved. Retailer shall not charge the Lessee any fee in connection with a return or exchange.
16. **Progressive Marks; Retailer Marks.** Each Party's trademarks, service marks, logos, trade names, and brands for all

products and services shall be referred to herein as its "Marks." Neither Party may: (i) include in or use the other Party's Marks, or any marks that are confusingly similar to or derivative of the other Party's Marks as part of its trade name (registered or otherwise), logos, or other identifiers. Subject to the terms and conditions of this Section, during the Term, each Party hereby grants to the other Party a royalty-free, non-exclusive, non-transferable right and license to use the Party's Marks solely as may be required in order for such Party to exercise its rights and perform its obligations under this Agreement. All use of a Party's Marks, and any goodwill arising out of such use, inures solely to the benefit of the Party granting such license. This license may be terminated by either Party upon written notice to the other and shall terminate automatically upon any termination of this Agreement.

17. **Publicity.** Notwithstanding anything to the contrary in Section 12, either Party may publicly announce the existence of this Agreement upon thirty (30) days' notice to the other party. Additionally, nothing in this Agreement shall preclude either party from making any disclosures required by law or which are reasonably necessary in conjunction with the filing of any document required to be filed with any governmental body, authority or agency; provided, however, that such party will notify the other party in writing of such disclosures and will, to the extent practicable, allow such other party reasonable time to comment on such release or statement in advance of such issuance.
18. **Invalid or Void Provisions.** If any provision of this Agreement is deemed invalid, illegal, or unenforceable in any jurisdiction, such provision will not be affected or impaired thereby in any other jurisdiction and the remainder of this Agreement will remain in full force and effect in all jurisdictions.
19. **Survival.** Upon the expiration or termination of this Agreement, the obligations of the parties to each other will come to an end, except that the provisions of Section 2(c) (*Purchase price; Progressive Payment to Retailer for Leased Merchandise*), Section 3 (*Payments on Contracts*), Sections 5(c), 5(h) and 5(i) (*Representations, Warranties and Covenants of Retailer*), Section 10 (*Assignment*), Section 12 (*Confidentiality*), Section 15 (*Returns and Exchanges*), Section 16 (*Progressive Marks; Retailer Marks*), and Section 21 (*Governing Law; Arbitration*) will survive.
20. **Counterparts; Facsimile Signatures.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which will constitute the same agreement. Each party agrees to the use of electronic signatures and such signatures will be binding on the parties to the same extent as originally signed counterparts.
21. **Governing Law; Arbitration.** This Agreement will be governed by the substantive laws of the State of Utah, without respect to its choice of law statutes. In the event of any dispute, controversy, or claim arising out of or relating to this Agreement ("Dispute"), the party raising such Dispute will notify the other party promptly and no later than sixty (60) days from the date of its discovery of the Dispute. Any Dispute that cannot otherwise be resolved through informal discussions will be resolved in an arbitration conducted in accordance with the commercial arbitration rules of the American Arbitration Association (AAA), and judgment upon the arbitration award may be entered in any court having jurisdiction thereof. The arbitration tribunal will consist of a single arbitrator mutually agreed upon by the parties or designated by the AAA. The place of arbitration will be Salt Lake City, Utah, unless otherwise agreed. The arbitral award will be final and binding. The parties waive any right to appeal the arbitral award. Each party may seek judicial assistance: (i) to compel arbitration, (ii) to obtain interim measures of protection prior to or pending arbitration, (iii) to seek injunctive relief in the courts of any jurisdiction as may be necessary and appropriate to protect the unauthorized disclosure of its proprietary or confidential information, and (iv) to enforce any decision of the arbitrator, including the final award. The arbitration proceedings will be as confidential and private as permitted by applicable law. The parties will not disclose the existence, content, or results of any proceedings, and the parties hereby agree that the materials submitted in connection with such proceedings will not be admissible in any other proceeding.
22. **Force Majeure.** Neither party to this Agreement will be liable to the other for any failure in performance of this Agreement in accordance with its terms if such failure arises out of a cause beyond the control and without the fault or negligence of such party. Such causes may include but are not limited to acts of God, of the public enemy or of civil or military authority, unavailability of energy resources, system or communications failure, delay in transportation, fires, strikes, riots, pandemic, or war. In the event of any force majeure occurrence, the disabled party will use its best efforts to meet its obligations as set forth in this Agreement.

23. **Notices.** Any party giving or making any notice, consent, request, demand, or other communication (each, a "Notice") pursuant to this Agreement must give the Notice in writing and use one of the following methods, each of which for purposes of this Agreement is a writing: Express Mail, Registered Mail, or Certified Mail (in each case, return receipt requested and postage prepaid); internationally recognized overnight courier (with all fees prepaid); or email. If Notice is given by e-mail, it must be confirmed by a copy sent by any one of the other methods. Each party giving Notice shall address the Notice to the Legal Department of the receiving party at the address set forth in the initial paragraph of this Agreement.