



**PROGRESS MFG. INC.**  
**THIRD-PARTY MARKETPLACE AUTHORIZED ONLINE SELLER**  
**AGREEMENT**

This Progress Mfg. Inc. Third-Party Marketplace Authorized Online Seller Agreement (the “Agreement”) is hereby entered into by and between Progress Mfg. Inc. and the undersigned Seller (“Seller,” “you” or “your”) (collectively, the “Parties” and individually a “Party”), and supplements, amends, and is deemed incorporated into the currently effective Authorized Distributor Policy, Authorized Reseller Policy, Authorized Retailer Purchase Terms and Conditions, or Authorized Retailer Policy, as applicable, between you and Progress Mfg. Inc. (the “Terms”). The “Effective Date” of this Agreement is the date this Agreement is accepted by Progress Mfg. Inc. after being agreed to by you. You agree to this Agreement, and are deemed the “undersigned” by signing below. Except as supplemented or amended pursuant to the terms and conditions in this Agreement, the Terms remain unchanged and in full force and effect as written. Unless otherwise defined herein, capitalized terms herein shall have the same meanings ascribed to them in the Terms.

1. **Authorization of Online Sales.** Except as may be explicitly set forth in the Terms, the Terms prohibit the sale of Products manufactured by Progress Mfg. Inc. online on any website other than a Permissible Website. Retailer shall not market or offer for sale the Products on or through any publicly accessible website other than a Permissible Website, including, without limitation, any third-party marketplace website such as Amazon, eBay, Jet, Rakuten, Walmart Marketplace, or Sears Marketplace, without the prior written consent of Progress Mfg. Inc. Such consent is granted solely through execution by Progress Mfg. Inc. of the Third-Party Marketplace Authorized Online Seller Agreement. No Progress Mfg. Inc. employee or agent can authorize online sales through oral statements, other written agreement, or by any other means.

Execution by Progress Mfg. Inc. of this Agreement constitutes Progress Mfg. Inc.’s approval, and the various provisions in the Terms pertaining to such prohibition are deemed amended in order to effectuate such approval. Subject to and to the extent provided by the terms and conditions herein, you may market for sale and sell Products solely and exclusively at the website(s) identified as approved by Progress Mfg. Inc. in the Authorized Online Seller Application above (hereinafter, the “Authorized Websites”) or designated as Permissible Websites in the Terms. You are prohibited from marketing for sale and/or selling Products on any other website. Your Authorized Websites must be confined to the specific approved domain name(s) and/or screen names(s) or storefront name(s). You may not use any Progress Mfg. Inc. trademark or product name, nor any misspelling of any Progress Mfg. Inc. trademark or product name, in the construction of your domain name, including top-level domains and sub-domains, for any part of your Authorized Websites, or in the construction of any screen name or storefront name used on an Authorized Website. You may not sell online anonymously. The full legal name, address, and telephone contact of your business must be clearly indicated on your Authorized Websites. Your Authorized Websites must not give the appearance that they are operated by Progress Mfg. Inc. At Progress Mfg. Inc.’s request, you will reasonably cooperate in demonstrating and/or providing access to, and copies of, all web pages that comprise your Authorized Websites. You represent and warrant that, in all operations of your Authorized Websites, you are compliant and will maintain compliance with the Payment Card Industry Data Security Standard (PCI DSS) and will be certified at least annually or as required by PCI DSS as compliant at the appropriate merchant level. Should marketplace websites assign identifiers to Progress Mfg. Inc.’s Products, you shall only use those identifiers that Progress Mfg. Inc. indicates have been assigned to Progress Mfg. Inc. You shall not request new identifiers. In the case of Amazon listings, you shall only list products against Progress Mfg. Inc.-provided Amazon ASINs.

2. **Reporting.** Seller shall keep Progress Mfg. Inc. generally advised on its sales of the Products and commercial conditions in connection with Seller's sales of Products on the Authorized Websites. Seller shall, at its own expense, within 30 days following the Effective Date of this Agreement and every 30 days thereafter, submit to Progress Mfg. Inc. a complete and accurate report containing the following information: Itemized number of Products sold by Seller, the specific U.S. States where the Products were sold, sales (in revenue dollars) generated from the sale of Products and any other data as may be reasonably requested by Progress Mfg. Inc. from time to time.
3. **Product Fulfillment and Sales.** In your sales of Products from your Authorized Websites, you acknowledge and agree that you are responsible for all fulfillment to your individual customers, any applicable taxes associated with such individuals' purchases of Products, and any returns of Products. Unless separately authorized in writing by Progress Mfg. Inc., Seller may not use any third-party fulfillment service to store inventory or fulfill orders for the Products. In your marketing and descriptions on your Authorized Websites, all Product images and descriptions must be kept up to date. You must remove outdated Product images and descriptions. You may not ship any Products to customers outside the United States of America. Accordingly, you will prominently display on your Authorized Websites a statement similar to the following: "We ship Progress Mfg. Inc. products only to customers within the United States of America."
4. **Progress Mfg. Inc. Intellectual Property.** Progress Mfg. Inc. grants you a limited, non-exclusive, non-transferable, revocable license to use those Progress Mfg. Inc. trademarks, trade names, service marks, logos, and trade dress separately authorized in writing by Progress Mfg. Inc. (collectively for this Agreement, "**Progress Mfg. Inc. IP**") solely for purposes of performing marketing under this Agreement on your Authorized Websites; provided, however, Progress Mfg. Inc. may review your intended or current use of such Progress Mfg. Inc. IP at any time. This license shall be revoked immediately upon termination of this Agreement. Your use of Progress Mfg. Inc. IP shall be in conformance with any guidelines that may be provided by Progress Mfg. Inc. and must be commercially reasonable as to the size, placement, and other manners of use. All goodwill arising from your use of Progress Mfg. Inc. IP shall inure solely to the benefit of Progress Mfg. Inc. The following copyright attribution must appear on any page of your Authorized Websites where Progress Mfg. Inc. graphic material appears and you must update it yearly or as directed by Progress Mfg. Inc. from time to time: *Progress Mfg. Inc.'s logo, text, graphics, and photo images are the property of Progress Mfg. Inc. and are used with permission. Copyright © 2018.*
5. **Termination.** Progress Mfg. Inc., in its sole and absolute discretion, may terminate its approval for you to market and sell Products at your Authorized Websites, and you must cease all such marketing and sales immediately upon receiving notice of such termination. On termination of your status as an Authorized Distributor, Authorized Reseller, or Authorized Retailer pursuant to the Terms, you must immediately cease all marketing and sales of Products on your Authorized Websites and your authorization to use Progress Mfg. Inc. IP as set forth in Section 3 (Progress Mfg. Inc. Intellectual Property) is revoked.
6. **Availability of Injunctive Relief.** If there is a breach or threatened breach of Sections 1 (Authorization of Online Sales), 2 (Product Fulfillment and Sales), 3 (Progress Mfg. Inc. Intellectual Property) or 4 (Termination) of this Agreement, it is agreed and understood that Progress Mfg. Inc. will have no adequate remedy in money or other damages and accordingly shall be entitled to injunctive relief and other equitable remedies; provided, however, no specification in this Agreement of any particular remedy shall be construed as a waiver or prohibition of any other remedies in the event of a breach or threatened breach of this Agreement. No failure, refusal, neglect, delay, waiver, forbearance, or omission by Progress Mfg. Inc. to exercise any right(s) herein or to insist upon full compliance by Seller with Seller's obligations herein shall constitute a waiver of any provision herein or otherwise limit Progress Mfg. Inc.'s right to fully enforce any or all provisions and parts thereof.

7. **Indemnification.** Except as otherwise provided herein, each Party shall, and hereby does, indemnify, defend, save and hold harmless the other Party, and its directors, officers, employees, shareholders, partners, counsel, auditors, accountants, agents, advisors and all other representatives and each of the heirs, executors, successors and assigns of any of the foregoing, from and against any and all losses, liabilities, obligations, actions, causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, and demands whatsoever, in law, admiralty, or equity, known or unknown of any kind to the extent they are caused by, arise from, or are incurred in connection with (a) any breach of, or failure to perform, any term, covenant or condition in the Agreement by the indemnifying Party, or (b) the negligence or willful misconduct of the indemnifying Party or its officers, employees, agents or contractors.

8. **Miscellaneous.** Progress Mfg. Inc. reserves the right to update, amend or modify this Agreement upon written notice to Seller. Unless otherwise provided, such amendments will take effect immediately and Seller's continued use, advertising, offering for sale, or sale of the Products on the Authorized Websites following notice of the amendments will be deemed Seller's acceptance of the amendments. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, nor shall it constitute a course of dealing and no waiver shall be effective unless made in writing. If any provision of this Agreement is held contrary to law, the remaining provisions shall remain valid. This Agreement may not be assigned or transferred by Seller without the prior, written consent of Progress Mfg. Inc. Progress Mfg. Inc. is entitled to assign this Agreement, in whole or in part, without Seller's consent to any Progress Mfg. Inc.-affiliated company or to any entity to which Progress Mfg. Inc. sells, transfers, conveys, assigns, or leases all or substantially all of its rights and assets with respect to the development, production, marketing, or sale of the Products. This Agreement is intended for the benefit of the Parties and their permitted assigns, and no other person will be entitled to rely upon this Agreement or be entitled to any benefits under this Agreement. This Agreement, the Terms and their attachments, if any, constitute the entire agreement between the Parties regarding the contemplated transactions and supersedes all prior agreements and understandings between the parties relating to the sale of the Products online. The descriptive headings and sections of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions hereof. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same will not apply a presumption that the terms hereof will be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it being agreed that all Parties, directly or through their agents, have participated in the preparation or negotiation hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

9. **Governing Law and Venue.** The terms of this Agreement and any dispute arising under it shall be governed by, construed, and enforced in accordance with the laws of the State of Utah, without regard to its choice of law rules. In the event of a dispute over the terms or performance under this Agreement, Seller expressly submits to personal jurisdiction and venue in the federal or state courts in Utah County, Utah.

10. **Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES EACH HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR THE PARTIES ACTIONS IN THE NEGOTIATIONS, ADMINISTRATION, OR ENFORCEMENT HEREOF OR THEREOF. THE PARTIES ACKNOWLEDGE THAT SUCH WAIVER IS MADE WITH FULL KNOWLEDGE AND UNDERSTANDING OF THE NATURE OF THE RIGHTS AND BENEFITS WAIVED HEREBY, AND WITH THE BENEFIT OF ADVICE OF COUNSEL OF ITS CHOOSING.

<b>Progress Mfg. Inc. products you are authorized to sell on a Third Party Marketplace website:</b>	<b>Progress Mfg. Inc. Use Only</b>
Equal-i-zer®	<input type="checkbox"/> Approved <input type="checkbox"/> Declined
Equal-i-zer parts and accessories	<input type="checkbox"/> Approved <input type="checkbox"/> Declined
Fastway Flash™	<input type="checkbox"/> Approved <input type="checkbox"/> Declined
Fastway parts and accessories	<input type="checkbox"/> Approved <input type="checkbox"/> Declined
Fastway e2	<input type="checkbox"/> Approved <input type="checkbox"/> Declined
Other ( <i>please list</i> )	<input type="checkbox"/> Approved <input type="checkbox"/> Declined

<b>Third Party Marketplaces you are authorized to sell on:</b>	
<b>Requested Websites:</b> Please identify all websites where you wish to market for sale and sell Products ( <i>one per line, exact spelling required</i> ). <i>Example: <a href="http://www.ABCStoreName.com">www.ABCStoreName.com</a></i> <i>Example: Amazon.com/Storefront name "ABC Store"/ Merchant ID</i>	<b>Progress Mfg. Use Only</b>
	<input type="checkbox"/> Approved <input type="checkbox"/> Declined
	<input type="checkbox"/> Approved <input type="checkbox"/> Declined
	<input type="checkbox"/> Approved <input type="checkbox"/> Declined
	<input type="checkbox"/> Approved <input type="checkbox"/> Declined
	<input type="checkbox"/> Approved <input type="checkbox"/> Declined
	<input type="checkbox"/> Approved <input type="checkbox"/> Declined

The parties have caused this Progress Mfg. Inc. Third-Party Marketplace Authorized Online Seller Agreement to be executed in their respective names by their duly authorized representatives.

**Progress Mfg. Inc.,**  
a Utah corporation

**Seller:** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Signature Date: \_\_\_\_\_

Signature Date: \_\_\_\_\_

**Progress Mfg. Inc.**  
**353 South 1100 West**  
**Provo, UT 84601**  
**1-800-478-5578 (Equalizer)**  
**1-877-523-9103 (Fastway)**