



## ProCat Testing LLC General Terms and Conditions

### 1. Applicability of these Terms and Conditions

Except as expressly set forth below or as otherwise mutually agreed to by the parties in writing, these ProCat General Terms and Conditions together with the terms and conditions in the applicable Statement of Work (collectively, the "Terms and Conditions") set forth the terms and conditions pursuant to which ProCat will provide Services to end user customers ("Customer", "You" or "Your") based upon the Services Customer has purchased from ProCat. Customer will define and communicate required services and specific work instructions in writing.

By submitting a purchase order or Statement of Work for Services to ProCat, Customer agrees to be bound by these Terms and Conditions. Unless otherwise agreed in writing by ProCat, no other terms and conditions endorsed upon, delivered with or contained in a purchase order, or in any other similar document, will amend, or vary the provisions of these Terms and Conditions.

### 2. Definitions

In these Terms and Conditions, the following terms shall have the following meanings:

- **"ProCat"** shall mean ProCat Testing LLC.
- **"Services"** means the ProCat services offerings provided under a relevant Statement of Work.
- **"Statement of Work"** means a written description of Services to be performed by ProCat that is signed by ProCat and Customer.
- **"Terms and Conditions"** shall have the meaning set forth in Section 1 of these Terms and Conditions.

### 3. Service Terms

a. **Orders.** Pursuant to your purchase order, placed with ProCat, you have ordered one or more available Services. ProCat will determine the pricing associated with any Service. All orders are subject to acceptance by ProCat, and no obligation, including a purchase order, shall be binding on ProCat unless and until such order is accepted by ProCat, or, if earlier, Services are provided to Customer.

b. **Service Exclusions.** Services do not cover any: (i) guarantee for resold, new, used, leased, remanufactured or self-made parts or equipment; or (ii) repair or replacement of damage to or defects in parts or equipment.

c. **Vehicle emissions testing orders:** ProCat will perform Services according to Customer specified drive cycles. ProCat will collect and transfer emissions data output from specified Services to Customer. ProCat does not characterize the test data.

d. **Payment Terms.** Payment is due for 100% of quote amount prior to commencement of Services, unless otherwise agreed by ProCat in a Statement of Work.

e. **Shipping Terms.** Incoterms: EXW ProCat, Wixom, MI. Any costs of shipping and importing/exporting will be the responsibility of Customer.

4. **Customer Obligations.** You are solely responsible for any additional Customer obligations or responsibilities as identified in an applicable Statement of Work. Customer is responsible for the functioning of the test vehicle including all pollution control devices, ECU programming and systems. ProCat does not verify the functioning of the vehicle, its ECU or systems.

5. **Intellectual Property.** Each party shall retain all right, title and interest in and to, and possession of their respective pre-existing intellectual property. Furthermore, ProCat shall retain all right, title and interest in and to, and possession of, any know-how, technical information, specifications, documents, ideas, concepts, methods, processes, techniques and inventions developed or created by or on behalf of ProCat relating to Services performed under or in relation to a Statement of Work. Any intellectual property, know-how, information or documents supplied at any time by one party to the other shall be treated as confidential and covered by the confidentiality undertaking in Section 9 below.

6. **Termination.** Either party may at its option terminate any applicable Service or Statement of Work in whole or in part, with thirty (30) calendar days' prior written notice. Upon termination, Customer will be responsible for costs and changes of any work-in-progress.

7. **Indemnity.** Customer shall indemnify, defend and hold ProCat harmless from all claims, suits, losses, expenses, judgments and liabilities (including reasonable attorney's fees) for personal injury or death to the extent caused by the act or omission of Customer or its employees.



## 8. WARRANTY/LIMITATION OF LIABILITY.

a. PROCAT WARRANTS THAT SERVICES PERFORMED BY PROCAT PURSUANT TO THESE TERMS AND CONDITIONS WILL BE IN A WORKMANLIKE MANNER CONSISTENT WITH GENERALLY ACCEPTED INDUSTRY STANDARDS. PROCAT MAKES NO OTHER WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY. IN NO EVENT WILL PROCAT BE LIABLE FOR ANY DELAY IN FURNISHING SERVICES. SPECIFICALLY, PROCAT DOES NOT WARRANT THAT THE RESULTS OR THE DEVELOPMENT OR APPLICATION THEREOF WILL BE SATISFACTORY FOR THE CUSTOMER'S PURPOSES, OR THAT THE SERVICES, TEST DATA, RESULTS OR THE COMMUNICATIONS BY PROCAT WITH THE CUSTOMER ARE SUITABLE FOR AND INCLUDE ALL INFORMATION NECESSARY TO OBTAIN CUSTOMER'S OBJECTIVES. CUSTOMER MUST REPORT IN WRITING ANY BREACH OF THIS WARRANTY TO PROCAT, AND CUSTOMER'S EXCLUSIVE REMEDY AND PROCAT'S ENTIRE LIABILITY FOR ANY BREACH OF SUCH WARRANTY SHALL BE TO RE-PERFORM THE SERVICES, OR IF PROCAT IS UNABLE TO RE-PERFORM THE SERVICES AS WARRANTED, CUSTOMER WILL BE ENTITLED TO RECOVER THE PRORATED FEES PAID TO PROCAT FOR THE NONCONFORMING SERVICES.

b. EXCEPT FOR BREACHES OF CONFIDENTIALITY (SECTION 9) OR INTELLECTUAL PROPERTY (SECTION 5), IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, LOST BUSINESS PROFITS, OR LOSS, DAMAGE OR DESTRUCTION OF DATA, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SAME.

c. SUBJECT TO SUB-CLAUSE b. ABOVE, EXCEPT FOR BREACHES OF CONFIDENTIALITY (SECTION 10) OR INDEMNITY OBLIGATIONS (SECTION 7), PROCAT'S MAXIMUM LIABILITY FOR ALL OTHER DAMAGES WILL BE LIMITED TO THE AGGREGATE SERVICE FEES PAYABLE TO PROCAT PURSUANT TO THE APPLICABLE SERVICE.

## 9. Confidentiality.

a. **Confidential Information.** Each party (the "Disclosing Party") may from time to time disclose to the other party (the "Recipient") certain information regarding the Disclosing Party's business, including its products, inventions, operations, methodologies, systems, processes, product development plans or intentions, know-how, designs, trade secrets, market opportunities, business or financial affairs, and technical, marketing, financial, employees, planning, and other confidential or proprietary information ("Confidential Information"). ProCat's Confidential Information includes (without limitation) the function and performance of the Service and the terms of this Agreement. Confidential Information includes information disclosed orally, visually, or through any tangible medium.

b. **Protection of Confidential Information.** Recipient will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by these Terms and Conditions or to carry out the Services, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of carrying out the Services and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

c. **Residuals.** The Recipient shall be free to use for any purpose the residuals resulting from access to or work with the Confidential Information of the Disclosing Party, provided that the Recipient shall not disclose the Confidential Information except as expressly permitted hereunder. The term "residuals" means information in intangible form, which is retained in memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. The Recipient shall not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, this section shall not be deemed to grant to the Recipient a license under the Disclosing Party's copyrights or patents.

d. **Exceptions.** Recipient's obligations under Section 9(b) with respect to any Confidential Information of the Disclosing Party will terminate if and when Recipient can document that such information: (a) was already lawfully known to Recipient at the time of disclosure by the Disclosing Party; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, the Disclosing Party's Confidential Information. In addition, Recipient will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in advance, in writing by the Disclosing Party, (ii) necessary for Recipient to enforce its rights under these Terms and Conditions in connection with a legal proceeding; or (iii) required by law or by the order or a court of similar judicial or administrative body, provided that Recipient notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure.



**10. Force Majeure.** Except for the obligation to make timely payments, neither party will be liable to the other for delays or failures to perform occasioned by causes beyond its reasonable control. Such acts or events shall include but not be limited to, acts of God, civil or military authority, civil disturbance, riot, fire, strikes, lockouts or slowdowns, factory or labor conditions, inability to obtain necessary labor, materials or manufacturing facilities, delayed issuance of export control licenses. In the event of such delays or failures to perform, any dates or times by which ProCat is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the additional time required because of the delay or failure to perform. Each of the parties shall promptly inform the other of any event of force majeure, its expected duration and cessation, respectively.

**11. General.**

a. Except as otherwise set forth in these Terms and Conditions, these Terms and Conditions may only be modified by a written agreement duly signed by authorized representatives of both parties, and variance from or addition to the provisions of these Terms and Conditions in any order or other written notification will be of no effect.

b. If any provision of these Terms and Conditions shall be held to be invalid, illegal, or unenforceable, the remaining terms of these Terms and Conditions shall in no way be affected or impaired.

c. The waiver by either party of a breach of any provision of these Terms and Conditions shall not be construed as a waiver of any subsequent breach.

d. In performing the Services, ProCat shall be acting as an independent sub-contractor and neither ProCat nor its personnel or representatives shall be deemed to be your agents or employees. ProCat shall have complete charge and responsibility for personnel employed or engaged by ProCat.

e. Customer may not assign nor transfer any or all of its rights, under the Term and Conditions or a Statement of Work, by operation of law or otherwise, without the prior written consent of ProCat. Any attempted assignment or transfer in violation of this provision shall be null and void. ProCat's affiliates may participate in ProCat's performance under these Terms and Conditions or Statement of Work, and ProCat may also sub-contract its obligations under, these Terms and Conditions or Statement of Work provided that ProCat remains liable for the performance of its affiliates and/or sub-contractors in respect thereof.

f. Save as expressly provided, no term or provision of these Terms and Conditions or Statement of Work shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).

g. Customer acknowledges that ProCat has trained personnel who perform Services and has made an investment in such personnel. Therefore, at no time during the term of a Statement of Work or for one year thereafter, will the Customer directly or indirectly either offer employment to or hire any ProCat employees who perform Services on behalf of ProCat without ProCat's express prior written consent.

h. Upon any expiration or termination of these Terms and Conditions, Sections 5 (Intellectual Property), 7 (Indemnity) and 8 (Warranty/Limitation of Liability) shall survive.

i. These Terms and Conditions and any Statement of Work shall be governed by (i) the laws of the State of Michigan, and any disputes will be subject to the exclusive jurisdiction of the Courts of Oakland County Michigan and/or the United States District Court – Eastern Michigan District. The U.N. Convention on Contracts for the International Sale of Goods does not apply. ProCat shall have the option to bring a suit before the courts of your domicile, when the claim is for payments due from you.

UNLESS OTHERWISE EXPRESSLY AGREED IN A SIGNED WRITING BY THE PARTIES IN ACCORDANCE HERewith, THESE TERMS AND CONDITIONS, TOGETHER WITH ANY APPLICABLE STATEMENT OF WORK, ARE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT OF TERMS AND CONDITIONS BETWEEN THE PARTIES, SUPERSEDING ALL PROPOSALS OR PRIOR TERMS AND CONDITIONS, AGREEMENTS OR COMMUNICATIONS, ORAL OR WRITTEN, BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF.