

GENERAL CONDITIONS OF PURCHASE



GENERAL CONDITIONS OF PURCHASE

- 1. The Contract..... 3
- 2. Acceptance of Order 3
- 3. Delivery 3
- 4. Quality of materials and workmanship..... 4
- 5. Packaging 4
- 6. Inspection 4
- 7. Warranty 4
- 8. Acceptance of goods and services..... 5
- 9. Price 5
- 10. Default..... 5
- 11. Rejection..... 6
- 12. Invoice..... 6
- 13. Payment 6
- 14. Contract amendments 6
- 15. Materials 7
- 16. Recovery of sums due 7
- 17. Indemnity 7
- 18. Advertising 8
- 19. Force Majeure..... 8
- 20. Sales to third parties 8
- 21. Hazardous goods..... 8
- 22. Termination and Insolvency 8
- 23. Bribery Act..... 9
- 24. General..... 9

1. The Contract

- 1.1 The parties agree that the contract between Michelin Tyre Public Limited company (Michelin) and the person, firm or company with whom Michelin's order is placed (Supplier) for the purchase of the goods and/or the acquisition of the services (the Contract) shall consist of:
- (a) Michelin's order whether printed overleaf or otherwise (the Order);
 - (b) these terms and conditions (the Conditions);
 - (c) any other documents (or parts thereof) specified in the Order, including samples, patterns, specifications, plans, drawings; and
 - (d) the Supplier's acceptance of the Order;
- and if there is any inconsistency between the documents comprising the Contract, they shall have precedence in the order listed above.
- 1.2 These Conditions shall apply to the Contract to the exclusion of any inconsistent terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.3 In the event of any inconsistency between these Conditions and any other document or form of communication between the Supplier and Michelin, these Conditions shall prevail unless expressly varied in writing and signed on Michelin's behalf.

2. Acceptance of Order

- 2.1 The Supplier shall be deemed to have accepted the Order on the earlier of:
- (a) the Supplier issuing written acceptance of it; and
 - (b) any act by the Supplier consistent with fulfilling the Order.

3. Delivery

- 3.1 The Supplier shall deliver the goods and/or provide the services to Michelin at the time or times and in the place or places and in the manner so specified by the Contract or any amendment thereto.
- 3.2 Unless otherwise agreed, delivery shall take place during Michelin's normal business hours. The Supplier shall supply Michelin in good time with any instructions or other information required to enable Michelin to accept delivery of the goods and performance of the services.
- 3.3 The time of delivery of the goods and of performance of the services shall be of the essence of the Contract.
- 3.4 All goods should be accompanied by a detailed advice note stating the Michelin purchase order number, the date and method of despatch and full particulars of the goods supplied (including the Michelin article code where this is shown on the face of the Order). All goods shall be sent by road carriage paid by the Supplier unless otherwise agreed in writing.

4. Quality of materials and workmanship

4.1 Without prejudice to any other rights Michelin may have the Supplier warrants to Michelin that:

- (a) the goods will:
 - i. conform as to quantity, quality and description with the particulars stated in the Contract, and be properly packed and secured;
 - ii. be of sound materials and workmanship;
 - iii. be of satisfactory quality and fit for the purpose for which they are required;
 - iv. comply with the appropriate EN Standards, British Standards and Codes of Practice and all statutory requirements and regulations relating to the manufacture and sale of the goods at the time when the same are ordered;
- (b) the services will:
 - i. be performed by appropriately qualified and trained personnel with all due care and diligence and to the highest standard of quality prevailing in the industry at the time of performance;
 - ii. be of satisfactory quality and fit for the purpose for which they are required;

4.2 The Supplier shall at all times comply with all laws and regulations relating to the Contract including without limitation the Health and Safety at Work Act 1974, the Consumer Protection Act 1987 and the Supply of Machinery (Safety) Regulations 1992 and any regulations made under them (in each case as amended).

5. Packaging

All goods delivered by the Supplier to Michelin shall be stillaged, palletised, or packed to Michelin's requirements without additional charge, and clearly marked with Michelin's purchase order number. If the packaging is returnable it must be clearly marked 'returnable packaging' otherwise such packaging shall be regarded as non-returnable and the cost as having been included in the Contract price.

6. Inspection

6.1 A representative of Michelin shall at all reasonable times be permitted access to the Supplier's premises, or elsewhere, in order to inspect, examine or test work in progress; records of work; materials procured for the purpose of manufacture of the goods; the process of manufacture to be carried out by the Supplier; and the completed goods before despatch.

6.2 The inspection, examination or testing carried out by Michelin under Condition 6.1 shall not relieve the Supplier of any liability under the Contract.

7. Warranty

7.1 Without prejudice to any other remedies of Michelin, the Supplier shall at his own expense and as soon as reasonably practical, upon a request by Michelin to do so:

- (a) repair, replace or refund (at Michelin's option) all goods which are or become defective during the period of:
 - iii. 12 months from the date when such goods are put into service; or
 - iv. 18 months from the date of delivery; whichever shall be the shorter, where such defect occurs following proper usage and is due to defective design, inadequate or faulty materials or workmanship, the Supplier's erroneous instructions as to use or any other

- breach by the Supplier of any provision of the Contract, including the Supplier's warranties, express or implied;
- (b) re-perform or refund the price of any services that have been performed defectively within 12 months of the date of their performance.

7.2 The repairs, replacement and/or re-performance required under Condition 7.1 shall be subject to the obligations set out in Condition 7.1 for a period of 12 months from the date of delivery, reinstallation or passing of tests whichever is appropriate after repair or replacement.

8. Acceptance of goods and services

Michelin shall not be deemed to have accepted any goods and/or services supplied until it has had a reasonable time to inspect them or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

9. Price

9.1 The Contract price shall be the price specified in the Order and shall be inclusive of all charges for packaging, packing, carriage, insurance and delivery of the goods and/or services to Michelin and any import taxes or duties or other duties, taxes, imports or levies incurred by the Supplier.

9.2 In the event of any alteration to the Contract by Michelin which requires a revision of the Contract price such revision shall be negotiated between the parties and the new Contract price shall be confirmed in writing to the Supplier by Michelin.

10. Default

If the goods and/or services provided by the Supplier are not delivered and/or performed in accordance with the Contract Michelin shall have the right, without prejudice to any other remedies available to, it to terminate the Contract by notice in writing either:

- (a) as respects all goods and/or services which have not been delivered and/or performed in accordance with the terms and conditions of the Contract at the time of such termination; or
- (b) as respects all goods and/or services to which the Contract relates other than those delivered and/or performed in accordance with the Contract before that time.

In the event of such termination Michelin may make any such other arrangements for the performance of the Contract as it sees fit and shall recover from the Supplier the amount by which the aggregate cost of such other arrangements exceeds the amount which would have been payable to the Supplier in respect of all the goods and/or services so replaced if they had been **delivered in accordance with the Contract**.

11. Rejection

11.1 Without prejudice to any of its other rights Michelin may reject any goods which on inspection in accordance with Condition 7 are found not to conform with the terms and conditions of the Contract.

11.2 Where Michelin rejects any goods under this Condition the Supplier shall at his own expense and risk remove from Michelin all rejected goods and shall do so within such period as shall be advised to the Supplier by Michelin in writing and in any event within seven working days from receipt of notification of rejection.

11.3 If the Supplier shall fail to remove the goods or any of them in accordance with Condition 11.2 Michelin may return the rejected goods or any of them to the Supplier at the Supplier's risk, and shall recover the cost of carriage from the Supplier by way of set-off against any amounts payable to the Supplier.

12. Invoice

12.1 In respect of goods, the Supplier shall invoice Michelin on or at any time after completion of delivery of all goods relating to an Order. In respect of services, the Supplier shall invoice Michelin on completion of all services under an Order. The Supplier shall ensure that all invoices bear Michelin's purchase order number.

12.2 The price or prices set out in each invoice shall be net of value added tax which must be added to the invoice at the correct rate and recorded in accordance with the statutory requirement.

13. Payment

Payment will be made at the end of the second month following the month of receipt of the goods or performance of the services. Any other arrangements must be agreed in writing by Michelin.

14. Contract amendments

14.1 Michelin may at any time by written amendment to the Order make changes in:

- (a) the samples, patterns, specifications, plans, drawings or other documents forming part of the Contract;
- (b) the method of carriage of the goods;
- (c) the packaging of the goods;
- (d) the place of delivery of the goods; and
- (e) the date and time for delivery of the goods.

The Supplier shall not make any changes in the design or composition of any goods ordered without the permission of Michelin.

15. Materials

15.1 All tools, patterns, samples, drawings, documents and other information supplied by Michelin (Materials) shall at all times remain the exclusive property of Michelin. Michelin is entitled to recall the Materials at any time and, in any event, the Supplier shall return the Materials to Michelin upon completion of the Order to which they relate. The Supplier is permitted to use the Materials solely for the purpose of fulfilling its obligations under the Contract.

15.2 The Supplier hereby assigns to Michelin with full title guarantee all intellectual property rights:

- i. arising out of the provision of the services (including any deliverables); and
- ii. in or relating to any goods that the Supplier has designed or otherwise developed for Michelin.

The Supplier shall promptly execute all documents and do all such things as are necessary to give effect to this Condition.

15.3 Except with the consent in writing of Michelin the Supplier shall not disclose the Contract or the Materials, or any part of them to any person other than its officials, employees and agents who need to know such information for the purposes of carrying out the Contract. Such disclosure shall be made in confidence and shall extend only so far as may be necessary for the purposes of the Contract. The Supplier and its officials, employees and agents shall not disclose the Contract or the Materials, or any part of them to any third party without the prior written consent of Michelin.

15.4 Except with the consent in writing of Michelin the Supplier shall not make use of any of the Materials otherwise than for the purpose of the Contract and the Supplier shall not make any **goods or part thereof similar to the goods supplied under the Contract for any other purpose.**

16. Recovery of sums due

Whenever under the Contract any sum of money shall be recoverable from or payable by the Supplier to Michelin, the same shall be deducted from any sum then due or which at any time thereafter may become due to the Supplier from Michelin under the Contract or any other contract with Michelin.

17. Indemnity

The Supplier shall indemnify Michelin against all actions, suits, claims, demands, costs, fines, charges, damages, losses and expenses suffered or incurred by Michelin and/or for which it may be liable to any third party due to, arising from or in connection with:

- (a) the negligent or wilful acts or omissions of the Supplier, its employees, agents or contractors in supplying, delivering and installing the goods or performing the services;
- (b) the breach of any provision of the Contract by the Supplier;
- (c) any defect in the workmanship, materials or design of the goods or their packaging;
- (d) any infringement or alleged infringement of any intellectual property right for or relating to the goods or the services unless such infringement has occurred directly as a result of any specification supplied by Michelin;
- (e) any non-compliance by the Supplier with the provisions of the Health and Safety at Work Act 1974, or any regulations made under it (in each case as amended);
- (f) any liability under the Consumer Protection Act 1987 (as amended) in respect of the goods; and
- (g) any claim against Michelin arising out of an incorrect description of the goods by the Supplier.

18. Advertising

The Supplier shall not without first obtaining the written consent of Michelin in any way whatsoever advertise or publish the fact that the Supplier has contracted to supply to Michelin the goods, and/or services under the Contract.

19. Force Majeure

If Michelin's process of manufacture is stopped, delayed or impeded by fire, flood, explosion, strike, lock-out or any form of industrial action, war, hostilities, civil disturbance, Government demand, regulation or prohibition, failure or delay on the part of any other supplier or suppliers or any other cause beyond the control of Michelin, Michelin may modify or cancel any Order as regards such part thereof which has not been executed by delivery to Michelin of goods or services specified. In such event no liability shall attach to Michelin by reason of such modification or cancellation.

20. Sales to third parties

The supplier agrees not to sell items made to Michelin's specifications to any person, firm or company except with Michelin's permission in writing.

21. Hazardous goods

21.1 Hazardous goods must be marked by Supplier with international damage symbol(s) and display the name of the material in English. Transport and other documents must include a declaration of the hazard and name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels and markings.

21.2 The Supplier shall observe the requirements of all UK and international regulations relating to the packing, labelling and carriage of hazardous goods.

21.3 All information held by or reasonably available to the Supplier regarding any potential hazards known or believed to exist in the transport, handling or use of the goods supplied shall be **promptly communicated to Michelin.**

22. Termination and Insolvency

22.1 Michelin shall be entitled to terminate the Contract without liability to the Supplier forthwith upon written notice to the Supplier if:

- (a) the Supplier presents a petition or has a petition presented for its winding-up or convenes a meeting to pass a resolution for voluntary winding-up or has a receiver or an administrative receiver appointed of all or any part of its assets or undertaking or has a petition presented for an administration order to be made in relation to it or calls a meeting of, or enters into any composition or arrangement with, its creditors;
- (b) the Supplier ceases or threatens to cease to carry on business; or
- (c) the Supplier is in material breach of its obligations under the Contract and fails to remedy the breach (when capable of remedy) within 30 days of a notice from Michelin specifying the breach.

- 22.2 In the case of Condition 22.1(a), Michelin shall be at liberty to allow any receiver, administrative receiver, administrator, liquidator or other duly appointed person to deal with the Supplier's estate, the option of carrying out the Contract.
- 22.3 Michelin may cancel any Order or Contract part thereof by giving notice to the Supplier at any time prior to delivery. In the event that Michelin exercises the rights of cancellation in accordance with this condition it's sole liability to the Supplier shall be to pay for the cost to the Supplier of the work reasonably carried out by the Supplier on or in relation to the goods or services at the date of cancellation and liability reasonably incurred by the Supplier to a third party at the date of termination in relation to the manufacture and supply of the goods or services.
- 22.4 The exercise of any rights granted to Michelin under Condition 23.1 shall not prejudice or affect any right of action or remedy which may have already accrued or may accrue thereafter to Michelin.

23. Bribery Act

- 23.1 The Supplier shall not, and shall procure that its directors, employees, agents, representatives, contractors or sub-contractors shall not, engage in any activity, practice or conduct which would constitute an offence under any anti-bribery and anti-corruption laws, regulations and codes, including but not limited to the Bribery Act 2010 (as amended).
- 23.2 The Supplier shall have in place adequate procedures designed to prevent any person working for or engaged by the Supplier or any other third party in any way connected to this Agreement, from engaging in any activity, practice or conduct which would infringe any anti-bribery and anti-corruption laws, regulations and codes, including but not limited to the Bribery Act 2010 (as amended).
- 23.3 Breach of this Condition 23 shall entitle Michelin to terminate the Contract by written notice with immediate effect.

24. General

- 24.1 The Supplier shall not without the prior written consent of Michelin sub-licence, assign, transfer or otherwise dispose of or sub-contract the Contract or any of its rights or obligations thereunder.
- 24.2 The parties intend each provision of this Contract to be severable and distinct from the others. If a provision of this Contract is held to be illegal, invalid or unenforceable, in whole or in part, the parties intend that the legality, validity and enforceability of the remainder of this Contract shall not be affected.
- 24.3 Unless this Contract expressly states otherwise a person who is not a party to this Contract has no right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999,
- 24.4 No failure or delay by Michelin to exercise any of the rights under the Contract shall operate as a waiver thereof and shall in no way affect Michelin's right to enforce such provision later. The Contract shall in all respects be governed by and construed in accordance with English law and shall be deemed to have been made in England and the parties agree to submit to the nonexclusive jurisdiction of the courts of England in connection with any dispute arising out of or in connection with the Contract.