

**TERMS AND  
CONDITIONS FOR  
WORK AND SERVICES  
CONTRACTS**



**TERMS AND CONDITIONS FOR WORK AND SERVICES CONTRACTS**  
**Michelin Reifenwerke AG & Co. KGaA**  
**and**  
**for all Michelin companies**  
**with the registered seat in Germany**

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## PART I

### 1. SCOPE

The following Terms and Conditions for Work and Services Contracts of Michelin Reifenwerke AG & Co. KGaA (hereinafter "MRW Terms and Conditions for Work and Services Contracts") shall apply exclusively to the execution of the order for all Michelin companies with registered seat in Germany (in particular Michelin Reifenwerke AG & Co. KGaA and Laurent Reifen GmbH, hereinafter "MRW") with the exception of Euromaster GmbH insofar as not otherwise agreed in writing. They shall in particular also apply if these are opposed by deviating General Business Terms & Conditions of the contractor, even if these were not explicitly objected to in an individual case.

In addition, the PURCHASING PRINCIPLES OF MICHELIN, which are known to the contractor, shall apply which can be viewed under [www.michelin.de/purchasing](http://www.michelin.de/purchasing) or which we will be pleased to make available upon request.

The MRW Terms and Conditions for Work and Services Contracts shall not apply to building services within the meaning of the Contracting Rules for the Awarding of Public Works (VOB).

The execution of the order means an acknowledgement of these MRW Terms and Conditions for Work and Services Contracts by the contractor.

Headings merely serve for better transparency; they are not part of the provisions.

### 2. BIDS

#### 2.1. Exclusion of costs

Bids are to be created free of charge for MRW. Claims for damages owing to the failure to be awarded the contract are excluded.

#### 2.2. Period of commitment

Bids are binding up to 4 months after submission of the bid. If negotiations are initiated for a commissioning, this deadline shall be deemed as inhibited for the duration of the negotiations.

#### 2.3. Subcontractors

The envisaged use of subcontractors is to be notified in the bid. Incidentally, Subclause 9 is to be complied with.

#### 2.4. Information obligation

The bidder is entitled and at the request of MRW obliged to inform itself on site and based upon the drawings handed over to it about the local conditions before submitting the bid. This in particular includes that the bidder informs itself before submitting the bid about the possible working hours (normal shift - weekend).

Objections, that it was not aware of such, will not be taken into consideration at a later date.

#### 2.5. Reporting obligations

The bidder undertakes to refer to any points in the invitation to tender which are unclear to it and if applicable express corresponding reservations and misgivings to MRW in writing in its bid. A non-compliance excludes subsequent complaints owing to possible unclear points.

If the bidder believes that supplements or additions are necessary it shall notify thereof in writing already with its bid. If the bidder can make more favourable proposals in a constructive, technical or financial point of view these offers are to be listed separately.

## **2.6. List of devices**

A list of all devices which are to be used with a connection value of more than 2 kW by stating the power connection values is to be enclosed with the bid. All devices which are used must comply with the relevant safety provisions and the VDE provisions. The installation of emergency generators requires the prior written consent of MRW, depending on the form of the order represented by the project manager, the coordinator or contact named as per contract.

## **3. TYPE AND SCOPE OF THE SERVICE**

### **3.1. General information**

The services which are to be carried out shall be determined according to the type and scope by the contract. The contractor shall satisfy its obligations as taken over by contract properly and carefully at its own responsibility according to the recognised rules and state-of-art technology, according to the laws and regulations which are applicable to the business relationship with MRW, according to the regulations of the supervisory authorities, the trade associations, in particular also with regard to industrial safety, fire prevention and environmental protection.

### **3.2. Order of rank of the documents**

Decisive for the contractual agreements are the following documents in the following order, which are handed over to the contractor or are to be complied with by it:

1. Order letter together with annexes (e.g. plans, graphics, schemas etc.) and time schedule.
2. Possible minutes of negotiations concerning the awarding of contracts.
3. Directory of services (German abbreviation: LV) with the additional technical and other regulations of MRW (e.g. standard article catalogue).
4. General and special technical specifications.
5. These MRW Terms and Conditions for Work and Services Contracts.
6. General technical and specialist regulations for the respective services (EN-, DIN-, VDE-, TÜV- etc. regulations) as well as the recognised rules of technology.
7. General statutory provisions.

### **3.3. Order according to samples**

If an order is placed according to a sample then the sample shall be decisive. The subsequent location of the samples shall be determined according to the contractual agreements.

### **3.4. Quality tests**

In case of agreed quality tests the contractor shall bear the thus necessary costs for the workers, machines, devices and operating supplies which are necessary in this respect insofar as not otherwise agreed in an individual contract.

## **4. ENTRY INTO FORCE OF THE CONTRACT, AMENDMENTS TO THE CONTRACT**

### **4.1. General information**

The order concerning the work which is to be delivered or the service which is to be provided shall be placed with the contractor by a written or fax order of the purchasing department of MRW. The

contract shall become effective with the receipt of the order confirmation letter / the order by the contractor.

The order is to be confirmed in writing by the contractor by no later than after the expiry of 10 days from the despatch of the order letter by MRW. The confirmation can be carried out by returning a photocopy of the order confirmation letter / the order which is signed legally binding. If the contractor begins with the execution of the order, without confirming the order once again, then the order letter and these MRW Terms and Conditions for Work and Services Contracts, which are sent to the contractor, shall be deemed as an object of contract.

#### **4.2. Right to cancellation of MRW**

If the order confirmation of the contractor is not received by MRW within this deadline MRW shall have the right to cancel the contract by written declaration.

#### **4.3. Deviating order confirmation**

If the order confirmation deviates from the order MRW shall only be bound if MRW has approved the deviation in writing.

#### **4.4. Amendments to the contract**

MRW can subsequently request changes to the condition of the work which is to be delivered or the service which is to be provided still within the framework of the service capability of the contractor.

Insofar as it becomes necessary in an individual case placed orders can be changed or supplemented in agreements between MRW and the contractor. Amendments and addendums to the contract require a written form; the order number together with possible supplements as well as the changed document are to be cited hereby. Amendments and addendums to the contract agreed orally as an exception require a written confirmation in order to be valid. The written form requirement can also only be effectively changed or revoked in writing.

A mutual agreement is to be reached concerning the possible implication on the time schedule and the price.

Amendments or addendums to the contract shall have no effect on the liability of the contractor.

#### **4.5. Remuneration of additional work**

In case of orders, which were awarded at a flat rate price, additional work carried out by the contractor shall only be remunerated if they are the object of a written instructions or an addendum and the thus ensuing additional costs were confirmed by MRW in writing.

Services which were not ordered are to be taken back or removed by the contractor at its costs at the request of MRW within a reasonable period of time.

## **5. REFERENCE AND ADVERTISING PURPOSES**

The use of MRW, Michelin or the MICHELIN logo (as word or picture mark) for reference or advertising purposes due to the order relationship is not permitted without the prior written consent of MRW

## **6. SHIPMENT**

### **6.1. General information**

All shipments, which the contractor carries out in order to execute an order are to be sent freight-free to the MRW recipient address (assembly site).

In case of flat rate orders the freight costs for shipments to and from the assembly site, including loading and unloading as well as the freight costs for travel luggage of the fitters are to be included in the flat rate price.

All deliveries of the contractor have, insofar as not otherwise stipulated or agreed by MRW, to be carried out at the risk of the supplier free delivery plant, which is to be stated as a place of destination/place of receipt (assembly site) (DAP, Incoterms® 2010). The most reasonably priced shipment alternative is to be chosen by the supplier.

## **6.2. Goods delivery / documents accompanying the goods**

Each shipment must bear the address and MRW order/release order number. In case no order/release order number is available the shipment is to bear the name of the contact as well as his personnel number.

The following details are to be entered in all documents accompanying the goods:

- Company designation of the contractor
- Point of unloading, assembly site
- The full order/release order number of MRW or if not available the name of the contact as well as his personnel number
- Marking of the shipment
- Designation of the goods, delivered quantity in the ordered measurement unit, gross and net weight insofar as possible
- Naming of the means of transport /freight forwarder
- Type of packaging

In the railway bill of lading

- Destination railway depending on the assembly plant of MRW.

## **6.3. Delivery note**

A delivery note issued as a single document is to be enclosed with each shipment. An official copy is to be handed over to the plant protection of MRW with the delivery outside of the customary working hours for the plant.

## **6.4. Loading of vehicles**

The loading of vehicles has to be carried out by complying with the statutory provisions and relevant guidelines, with hazardous goods in particular the ADR regulations (cf. European Convention on the International Transport of Hazardous Goods by Road).

## **6.5. Invoices**

Invoices may not be enclosed with the delivery.

## **6.6. Goods acceptance for general cargo shipments**

The goods acceptance for general cargo shipments is carried out, if this is carried out by MRW, under the exclusion of the responsibility for the accuracy of the shipment or the contents. The responsibility only refers to the full number and external intactness of the shipment, which we shall notify to the contractor within two workdays in order to safeguard our rights. Confirmations of receipt to freight forwarders, the railway and post company are no proof for the completeness and /or compliance with our order.

The acceptance of goods, which do not comply with the MRW order, is refused. Such goods shall be returned to the contractor carriage forward.

Temporary interim storage is carried out at the costs and risk of the contractor.

If a defect cannot be determined despite a proper examination (so-called hidden defects) we shall report this to the contractor by no later than two workdays after it is discovered. Otherwise the general cargo shipment shall be deemed as approved.

## 6.7. Packaging materials

The contractor has to comply with the principles of the relevant laws and regulations with the packaging for the parts which are to be delivered by it, in particular the packaging regulations. It shall ensure a reasonably priced and recyclable packaging, within the meaning of the packaging regulations, for the parts which are to be delivered by it.

Insofar as not otherwise regulated in an individual contract packaging materials shall remain the property of the contractor.

## 6.8. Responsibility of the contractor

Damages and costs such as waggon demurrage, re-storage costs etc., which are incurred to MRW by the fact that the contractor has not complied with the afore-mentioned provisions, shall be borne by the contractor.

The contractor shall be liable for the compliance with these shipping regulations by sub-suppliers.

The contractor shall oblige sub-suppliers to quote the contractor in all written documents.

# 7. HAZARDOUS GOODS

Insofar as the contractor is responsible for the shipment, the packaging, the storage, etc. of goods with the execution of orders, it shall examine before acceptance of the order whether such goods are to be classified as hazardous goods (e.g. toxic, caustic, flammable, potentially explosive, oxidising, radioactive). In such cases the contractor has to inform MRW immediately in detail. By no later than with its written order confirmation the contractor has to send the necessary binding declarations to MRW correctly completed and signed legally binding.

In case of deliveries of hazardous goods written instructions (in the form as stipulated in sub-section 5.4.3.4 ADR) are to be carried in the cabin of the vehicle crew in an easily accessible position. These instructions are to be made available to the vehicle crew by the carrier before commencing the tour in a language which each member of the vehicle crew can read and understand, if necessary thus also in several languages.

The contractor is responsible for all damages, which are suffered as a result of incorrect details in the binding declarations or, because existing regulations with the handling (packaging, shipment, storage, etc.) of hazardous goods as well as chemical substances and preparations were not complied with.

# 8. EXECUTION DOCUMENTS

## 8.1. General information

Execution documents are to be submitted to MRW for examination in line with the relevant EN and DIN standards and in duplicate in plenty of time so that possible complaints can be taken into consideration with the execution still without questions being raised about the completion of the object of contract within the deadline.

The contractor undertakes to produce drawings – if applicable owing to detailed structural analysis calculations, which it has to provide for the assembly according to overview drawings or other details free of charge for MRW.

## 8.2. Examination of the MRW documents

All documents made available by MRW, these shall include written documents, files and other material, and the details contained therein, are to be examined by the contractor at its own responsibility for their accuracy, completeness and compliance with regard to the services which are to be carried out and the applicable regulations. Possible objections are to be reported to MRW in writing when submitting the bid or before start of the execution.

### **8.3. Copyrights and other rights of MRW**

The drawings, plans, models, stencils, calculations, texts, logos (word and picture marks), photos, graphics, videos, music, noises, animations and other materials, handed over by MRW within the framework of the order, are subject to the copylaw and other laws for the protection of the intellectual property and are respectively protected in their entirety as well as in parts under copyrights law / trademark law. MRW or companies affiliated therewith shall reserve all rights hereto.

All of the afore-mentioned materials and other documents, handed over for the execution of an order, shall remain the property of MRW and may only be used for the purposes agreed as per contract. The contractor may neither re-use, nor reproduce the stated materials and other documents, nor make these accessible to third parties. After execution of the order or after request by MRW all stated materials and other documents are to be returned to MRW free of charge or to be destroyed by the contractor after the prior written consent on the part of MRW.

MRW is to be informed immediately in the event of the loss.

### **8.4. Deletion of electronic data and return of data carriers**

After completion of the contractual work or earlier at the request of MRW, by no later than with the termination of the order the contractor has to hand over all data of which it has gained possession, created processing and use results as well as data stocks, associated with the order relationship, to MRW or destroy these suitable for data protection after the prior consent. The same shall apply to test and scrap material. The protocol of the deletion is to be submitted upon request.

### **8.5. Release of technical documents by MRW**

Plans or technical documents produced by the contractor are to be submitted to MRW for approval. The approval does not mean any assumption of liability for the accuracy or completeness of the documents and shall have no effect on the liability for defects of quality or guarantee obligations of the contractor with regard to the object of service. This shall also apply to proposals and recommendations of MRW.

### **8.6. Plans, documents and further work of the contractor**

Plans and documents, which are to be supplied by the contractor, as well as all other work, which the contractor produces within the framework of the order, shall pass to the unlimited property of MRW. These documents may not be made accessible to third parties, in particular the competitors of MRW.

### **8.7. Verifiability of the documents**

Should the contractor create additional drawing documents or calculations at the special requests of MRW these documents must be capable of examination.

These services shall be remunerated separately.

The contractor undertakes, at the request of MRW, to enclose the approval declaration of an expert who is recognised in the relevant field with the construction plans and static calculations produced by it; the selection of this inspection engineer is to be coordinated with MRW. Insofar as not otherwise agreed the contractor shall bear the costs in this respect.

### **8.8. Hand-over of documents**

After execution of the order operating instructions, control and service instructions, guarantee and authorization deeds, test certificates, directories of spare parts as well as measurement results, test reports and test materials, etc. are to be handed over to MRW immediately.

### **8.9. Exploitation and use of industrial property rights**

The contractor shall be responsible for ensuring that its works do not infringe rights of third parties and that it has not yet disposed otherwise of the rights which form the object of this contract.

With the full payment MRW shall acquire the exclusive right, not limited in time, contents and space, to exploit or to use all work produced by the contractor within the framework of the respective order, in full or in part in all known types of use. MRW is therefore in particular entitled within the framework of the right to exploitation to reproduce or to distribute the work unlimited in terms of contents, space and time in full or in part. The further assignment of the right of use as well as the granting of further rights of use is explicitly permitted to MRW by the contractor. Moreover, MRW is entitled to process or re-design the work produced by the contractor within the framework of the orders. The rights of use shall be deemed as reasonably remunerated with the agreed remuneration for the respective order.

The work produced by the contractor within the framework of the orders and envisaged possibilities for use shall remain exclusively protected for Michelin. The contractor may not carry out the further development of the work or an assistance of the contractor in other work, which are deemed equivalent to the produced work or thus have an essential similarity for customers and/or competitors of Michelin or these may only be carried out with the explicit prior consent of MRW in these cases.

If an Internet platform/website/domain is created and/or maintained on the part of the contractor within the framework of the fulfilment of the contract towards MRW, the contractor shall ensure the compliance with MRW-internal processes and shall contact its contact person at MRW in this respect in advance. The contractor shall further ensure the registration of Michelin as domain holder at the responsible registration department with all rights, in particular the name, corporate and trademark rights. After the termination of the contractual relationship as well as in case of an essential deterioration to the asset circumstances/insolvency of the contractor the contractor shall transfer or hand over to MRW all documents relating to the domain, Internet platform/website for the full and unlimited use, further development and reproduction /distribution in particular also associated codes in the actual version, description and source of reference at this time of all used software and development tools, names and addresses of the programmers. This transfer or granting shall be carried out without any additional remuneration and at the costs of the contractor.

MRW or companies affiliated therewith have the exclusive right, at their decision, to apply for the entry of patents, trademarks or other industrial property rights for work / work results produced by the contractor within the framework of the order or to waive such an application for entry. MRW or the company affiliated therewith, as the holder of the industrial property rights can freely exploit the industrial property rights at its decision. If the contractor requests to exploit one or several of these patents or utility models for its own business operation or for another customer MRW or the company affiliated therewith shall examine the enquiry. MRW or the company affiliated therewith shall in this case conclude a licence agreement with the contractor as long as the other customer of the contractor does not compete directly or indirectly with MRW or its affiliated companies or there are other important reasons to reject the granting of a licence.

If MRW or the company affiliated therewith explicitly waive, in a written form and after the written enquiry of the contractor, holding all patents or utility models or parts thereof and do not request to protect patentable inventions within the framework of the confidentiality then the contractor is completely at liberty to hold these under its name and at its own costs whereby it shall grant MRW or companies affiliated therewith a free licence for the direct use or the indirect use through third parties, limited to the requirements of MRW or the company affiliated therewith.

Therefore, the contractor indemnifies MRW from all claims of third parties, which are asserted by these from possibly existing copyrights and / or related property rights.



## 9. EXECUTION / PROJECT MANAGEMENT / SUBCONTRACTORS

### 9.1. General information

#### 9.1.1. Full execution of the order

The contractor shall provide, insofar as not otherwise agreed in individual contracts, a full contract for work service, even if the partial services which are necessary in this respect have not been described in the order in full. The details which are provided by MRW for the execution of the assembly are to be examined by the contractor at its own responsibility.

### **9.1.2. Information obligations**

The contractor is a consultant on the specialist knowledge of which MRW relies. It has to satisfy its referral and explanatory obligations in connection with the service, which is to be provided, in a comprehensive manner.

### **9.1.3. Order documents, assembly flow**

MRW shall notify the contractor of the details which are necessary for executing the work. Insofar as necessary plans, drawings, models, etc. shall also be made available to it.

The contractor shall submit a binding assembly flow concerning the time progress of the assembly work at the request of the MRW project management. Before delivery of the assembly parts the contractor has to stipulate the exact start of the assembly with the MRW project management.

Costs for executions which deviate from this shall be for the expense of the contractor.

### **9.1.4. Provision of services by the contractor or subcontractors**

The contractor has to carry out the service itself. The assignment of the order or of partial services to third parties is only permitted with the prior written consent of MRW. The contractor has to hereby provide the following details upon request:

- Name and address of the envisaged subcontractor,
- Description of (partial)service, for which an order is to be placed with subcontractors,
- The time schedule envisaged with the subcontractor,
- Submission of the proof of employment and insurance of the employees of the envisaged subcontractor.

Excluded from this are the partial services to the subcontractors who are named already marked as procured from third parties in the bid of the contractor.

The contractor undertakes to also impose all obligations for which it is responsible towards MRW upon the subcontractor in writing. The contractor guarantees the proof and the examination by random samples that the subcontractor satisfies its obligations.

## **9.2. Dimensions, report of misgivings**

The dimensions are to be recorded or examined immediately on site.

The contractor must report possible misgivings with regard to the envisaged execution in writing before the start of the work. Misgivings which are reported too late, which influence the flow of the work or the adherence to the dates, shall be for the expense of the contractor.

In this case the contractor has to bear the incurred costs and other disadvantages itself.

## **9.3. Supervisory obligation over the assigned personnel and residence permits**

The contractor shall solely exercise the right to give instructions and the supervision over the employees assigned by it. The personnel of the contractor may not be integrated into the MRW organisation.

The persons authorized with safeguarding the plant protection at MRW (in particular plant management, Human Resources management and employees of the plant protection) are authorized to give the employees of the contractor instructions with regard to the compliance with the plant protection regulations.

The contractor undertakes to employ the employees occupied by it to satisfy all obligations from the respective order in line with the statutory, collective wage agreement and other mandatory regulations. The contractor is in particular obliged to properly conclude social insurances for the employed workers and to remit corresponding contributions.

The regulation of the working hours for the personnel of the contractor is carried out according to the guidelines of the contractor, however by coordination with the MRW project manager. The contractor is responsible for the compliance with the provisions for the protection of working hours by the personnel assigned by it.



The supplier shall only have the work assigned to it carried out by suitable skilled workers and supervise these during the work. Complaints and consequences from a breach of this obligation shall be for the burden of the contractor (e.g. subsequent improvements).

The contractor has to submit a list over the personnel who will be assigned to the MRW project manager before the start of the assembly by stating the details and broken down according to their specialist qualifications. Only qualified personnel may be used for the work. Personnel, who do not meet the demanded requirements, must be replaced by suitable personnel at the request of the MRW project management without costs being incurred for MRW hereby. A possible replacement of the person responsible for the project at the contractor is to be reported to MRW in time in advance.

The contractor undertakes not to employ any employees of MRW within its business operation.

The contractor has to ensure that all employees assigned by it, including the third party workers, have an if applicable necessary residence permit with a work permit. The contractor shall submit a copy of the necessary residence permits with work permits to MRW upon request or oblige the third party companies used by it accordingly.

The contractor moreover has to ensure that all employees assigned by it, including the third party workers, carry a personal identity card, passport, passport substitute or identity card substitute during their work activity for MRW and to submit these to the authorities of the customs administration upon request.

The contractor has to ensure these pre-requisites before assigning the corresponding workers.

MRW is entitled at all times to convince itself by controls based on random samples of the identity and the existence of the necessary residence permits with a work permit as well a identity documents of the employees and third party workers used by the contractor.

The contractor shall compensate MRW for all damages, suffered by MRW by the fact that a claim is asserted against it as principal contractor for the workers used by the contractor owing to the absence of a sufficient residence permit with a work permit or the failure to carry the identity documents.

MRW is further entitled to an extraordinary termination for the event that the contractor breaches the afore-mentioned regulations.

#### **9.4. Welding work**

Welding work in the production and warehouse halls is to be coordinated with the safety departments or the plant fire service before it is commenced.

Welding work may only be carried out by welders, who possess a welder's examination which is valid for the relevant work. This proof of eligibility is to be submitted to the MRW project management upon request insofar as not otherwise agreed in an individual const.

#### **9.5. Materials**

Only brand new materials may be used insofar as not otherwise explicitly regulated in an individual contract.

The contractor waives the objection of delayed reports of defects (§ 377 HGB [German Commercial Code]).

#### **9.6. Control of progress**

MRW is entitled to also convince itself of the qualitative execution of the work during the execution of the order. The contractor has to grant MRW the right to access in this respect during the business and operating hours. Upon request the execution documents are to be submitted to MRW for inspection and to provide the necessary information.

#### **9.7. Devices and tools of the contractor**

Devices and tools of the contractor are to be fitted with a property feature of the contractor before the transport to the MRW plant. A marking within the plant is only permitted with the consent of the MRW project management and if applicable under the supervision of the plant protection.

If, in special cases, materials, tools, etc. are to be removed from the warehouse of MRW for the expense of the contractor, they are to be requested through the MRW project management.

MRW is entitled to examine objects of the contractor which are located in the plant at all times for their road safety as well as ownership relationships.

The protection including the insurance of devices and tools, brought in by the contractor, against theft or damages is the responsibility of the contractor. MRW does not assume any responsibility or obligation in this respect whatsoever.

### **9.8. Overtime, working hours which are liable for approval**

Insofar as the contractor has to reinforce the assembly personnel in order to adhere to the agreed dates or double or Sunday shifts or bank holiday shifts are necessary it has to bear these additional costs.

Insofar as the work, in particular owing to its duration or time position, requires the procurement of an official permit, in particular according to the law governing working hours, it is the responsibility of the contractor, to provide these in time for the timely execution of the work.

### **9.9. Handling of operating equipment of MRW**

The contractor may only change, remove or control operating equipment of MRW insofar as this is envisaged by contract or it has previously received the written consent of MRW. In case of a breach of this obligation it has to pay for damages suffered thereby in full.

### **9.10. Authorized project agent**

The contractor shall provide the name of an authorized project agent to MRW as a contact. In case of major projects the contractor can name authorized agents for sub-projects. MRW shall on its part name one person as a dialogue partner towards the contractor, the MRW project manager (cf. also Part II Subclause 1.1.). The presence of the MRW project manager on the assembly site shall not release the contractor from its responsibility for the work which is to be carried out by it including its supervisory obligations.

The authorized project agent must be in the position to communicate both with its employees as well as with the local management team of MRW. The authorized project agent must speak German and the MRW group languages English or French.

The project language is German.

### **9.11. Reserve parts**

The contractor shall ensure that the availability of reserve and spare parts as well as their actual technical status for ensuring the functional capability of the plant is at least guaranteed for the duration of the depreciation.

### **9.12. Direct agreements**

Direct coordination and agreements between the contractor, the MRW project manager and other companies operating on the assembly site, which have a character to change the contract, require the written confirmation by MRW.

### **9.13. Joint and several liability of contractor and subcontractor**

The contractor shall be liable as joint and several debtors with the subcontractor commissioned by it for the execution of the part settled by the subcontractor in particular with regard to the deadlines, the quality of the service, the non-disclosure and the warranty.

The contractor undertakes to submit to the subcontractor all contractual agreements relating to it as well as these MRW Terms and Conditions for Work and Services Contracts, for which the subcontractor has to grant its consent. The contractor shall guarantee the proof and the examination by random samples for the fact that the subcontractor satisfies its obligations. The contractor has to submit to MRW upon request the contract concluded with the subcontractor immediately.

The contractor is only entitled to assign the order to the subcontractor or another third party in full or in part after the prior written consent of MRW.

## 10. QUALITY

### 10.1. Quality indicators

The contractor shall provide the requested services at its own responsibility with the customary care and attention and undertakes to achieve results, which comply with the agreed quality indicators.

The contractor is responsible for the availability of the services to the extent as agreed in the contract in all cases.

Insofar as defects can be determined the contractor undertakes to report these to MRW and remedy these immediately and to create and implement corresponding measures in this respect. The contractor shall inform MRW immediately about all other circumstances of interest for the business relationship.

The contractor undertakes to take corrective measures with the non-compliance with these quality targets and to inform MRW about the contents and the expected results as well as of the result of the corrective measures.

The contractor undertakes to keep regular recordings of its quality assurance measures and in particular to document deviations carefully and in full.

### 10.2. Quality assurance

The contractor shall ensure the execution of its services conform with the contract and the law by maintaining an effective quality assurance system. The contractor undertakes to ensure a zero-error-objective and the continuous improvement of its services. The conformity of the services is in particular assessed with the following indicators and by complying with the following criteria:

Upon request of MRW the contractor shall make an evaluation of the quality assurance described above available at the agreed intervals in the form of defined Excel tables.

A measurement and tracking system is to be introduced in order to assess the quality of the service in line with the quality assurance system. This is to be coordinated with MRW. The aim of the system is the control of the proper satisfaction of the services.

### 10.3. Audit

MRW reserves the right to conduct audits with regard to the quality system introduced by the contractor as well as the measured quality results. MRW shall announce the date for the audit in time in advance. The contractor undertakes to reasonably support the audit and to procure access to the business site. The costs incurred at the contractor owing to the audit shall be for the its expense.

## 11. EXECUTION DEADLINES

### 11.1. General information

The execution deadlines shall begin, insofar as not otherwise agreed as per contract, with the conclusion of the contractual agreements.

If a time schedule has been drawn up the individual deadlines contained therein are binding. Premature deliveries/services or partial deliveries/services require the prior consent by MRW. If the agreed dates are not adhered to by the customer the statutory provisions shall apply to the legal consequences.

### 11.2. Information obligation in case dates are exceeded

The contractor is obliged to take all necessary precautionary measures in order to adhere to the dates. If the contractor cannot adhere to the dates it has to notify MRW hereof immediately in writing after gaining knowledge and by stating the reasons.

Written agreements are to be reached immediately concerning possible postponements of dates.

### **11.3. Liability for exceeding of dates / conventional penalty**

The following shall apply to the exceeding of dates in addition to the above and the statutory provisions:

#### **11.3.1. Default**

If the contractor is in default MRW reserves the right to assert a penalty for each day by which the deadline is exceeded in the amount of 0.2 % of the agreed price per workday, a maximum however in the amount of 5 % of the agreed total price.

MRW is not obliged to reserve the right to request the conventional penalty with the acceptance, but can assert this right still until the final payment.

#### **11.3.2. Commissioning of third parties after the exceeding of dates**

If the conventional penalty has been forfeited MRW can – irrespective of other rights – after the expiry of a set reasonable final deadline or, if it is not necessary to set a deadline, without having set a final deadline, have the service not yet provided by the contractor carried out by a third party for the expense of the contractor.

## **12. IMPEDIMENT TO THE EXECUTION**

If the contractor feels that it is impeded in the proper execution of the services which were taken over then it has to report this to MRW immediately in writing by stating the reasons.

## **13. EXTRAORDINARY TERMINATION FOR AN IMPORTANT REASON**

### **13.1. Important reason**

The right to an extraordinary termination for an important reason remains unaffected. An important reason for the extraordinary termination is in particular delay in the date by more than 12 calendar days and prior fruitless written reminder, deviations in quality in breach of the contract, the repeated breach of substantial contractual obligations and the threatened insolvency of a contractual partner.

The contractor shall inform MRW immediately about essential changes relating to the person / the company of the contractor, in particular with regard to the capital stock or share capital, the shareholders and the management of the company.

Each change of this kind which is of a disadvantage for MRW entitles MRW to terminate this contract.

### **13.2. Settlement in case of termination**

In case of premature termination of the contract by MRW the settlement of the contractual services provided by the contractor until the time of the termination shall be carried out exclusively on the contractual basis. In the cases of a premature ending of the contract by termination owing to a breach of the contract the settlement shall only be carried out insofar as MRW can use the service as intended.

### **13.3. Termination owing to breach of the contract by the contractor**

Damages which are to be compensated for by MRW shall also be taken into consideration with the settlement as well as expenses, incurred by MRW by the fact that MRW provides the service not provided by the contractor itself or has this provided by third parties.

### **13.4. Granting of benefits and other criminal offences as a special reason for termination**

Within the framework of the order relationship with MRW the contractor undertakes to refrain from everything which may lead to a criminal liability against the competition, fraud, breach of trust, granting

of benefits, bribery, corruptibility or other corruption criminal offences of persons employed at the contractor or other third parties. Irrespective of the afore-mentioned the contractor undertakes to comply with all laws and regulations relating to this order relationship as well as the afore-mentioned PURCHASING PRINCIPLES OF MICHELIN.

In case of a breach MRW is entitled to terminate the contract extraordinarily or to cancel the contract and to interrupt all negotiations.

### **13.5. Partial terminations**

Parts of the contract, which can be treated independently of the entire contract, can be terminated separately for an important reason.

## **14. LIABILITY PROVISIONS, INSURANCE OBLIGATION**

### **14.1. Liability of the contractor**

The contractor shall be liable for all damages caused by it and its vicarious agents according to the statutory provisions.

### **14.2. Indemnification from liability of MRW**

The contractor shall indemnify MRW from all liability and assertions of claims for damages and events, which were suffered and can be attributed in connection with the execution of the contract by the contractor. The contractor shall indemnify MRW in the event of the assertion of a claim by third parties for the afore-mentioned damages and events. Possibly agreed limitations to liability shall not apply insofar as a claim is asserted against MRW by third parties.

This indemnification obligation shall also apply to claims owing to damages, which are suffered to public or private equipment (e.g. supply lines, etc.) during the execution of the work.

### **14.3. Safety precautions**

The contractor shall take all necessary precautions and safety measures at its costs in order to avoid physical injuries, property damages and financial losses.

### **14.4. Insurance obligation**

Insofar as insurance possibilities exist, the contractor has to take out sufficient liability insurance physical injuries, property damages and financial losses for itself and its various agents and employees at an insurance company which is deemed as solvent. The contractor has to maintain the insurance over the duration of the contractual relationships. The proof of the insurance is to be provided to MRW upon request. The scope of the contractual or also the statutory liability shall not be limited by the conclusion and proof of the liability insurance.

## **15. LIABILITY FOR ENVIRONMENTAL DAMAGES**

### **15.1. Liability of the contractor**

The contractor shall be liable for all damages, which are suffered by a breach of the relevant environment-related laws, directives and regulations and the regulations issued in this respect. It shall indemnify MRW from all claims, which are directed against MRW owing to such or similar breaches.

### **15.2. Special obligations to show and attention with pollutants**

When carrying out the work the contractor shall be responsible for a special obligation to show care and attention with regard to substances which pose a hazard for the environment. MRW is to be informed immediately if pollutants are presumed or found in connection with the execution of the work,

albeit in the earth, albeit in closed walls or containers or in any other manner. MRW is to be given the opportunity to examine and carry out suitable measures.

## **16. END OF THE ACTIVITY, ACCEPTANCE**

### **16.1. Stipulated inspections**

Stipulated inspections before the first commissioning by experts or competent persons have to be carried out before the acceptance.

### **16.2. Acceptance date**

The acceptance date shall be stipulated at the written application of the contractor.  
The contractor shall bear the risk until the acceptance of the work or the service.

### **16.3. Acceptance**

After termination of the contractual service or an agreed partial section a joint examination of the documents and the acceptance of the work or the service shall be carried out, which is documented by the fact that the authorized agents of both parties sign an acceptance protocol.

Activities such as in particular the commissioning, partial use of plants, interim inspections, issues of certificates, oral declarations or payments of MRW shall not be deemed as an acceptance.

### **16.4. Postpone of the acceptance date with the existence of defects**

If essential defects were already determined then MRW can postpone the acceptance date until the remedy of the defects. The protocol, in which the defects are to be listed, is to be signed by both contractual parties for the purpose documentation.

### **16.5. Costs of the acceptance**

The costs of the acceptance with the exception of the incurred personnel costs of MRW shall be borne by the contractor.

## **17. CLAIMS FOR DEFECTS**

### **17.1. Liability of the contractor**

The contractor shall be liable for ensuring that its service is free of defects; for the existence of warranted qualities and for the guarantees given by it as well as for the fact that the service complies with the intended use and in particular the requirements described in Subclause I.3.1 of these Terms and Conditions for Work and Services Contracts.

### **17.2. Remedy of defects**

MRW can at its own choice request the remedy of the defects or, should this not be possible or deemed reasonable, the production of a new work. After expiry of a final deadline unsuccessfully set to the contractor for the subsequent performance MRW can remedy the defects itself and impose the costs incurred hereby upon the contractor or request reduction or cancel the contract. The right to request damages shall remain unaffected hereby.

### **17.3. Remedy of defects at the costs of the contractor**

If the contractor does not satisfy its obligation to remedy defects despite the setting of a reasonable final deadline then MRW is entitled, without a further request, to remedy the defects itself or to have this carried out by another company at the costs of the contractor.

## **17.4. Obligation to bear costs in the event of a liability for defects**

All costs incurred with the liability for defects, e.g. for disassembly, assembly, freight, packaging, insurances, customs duties and other public duties, inspections and acceptances are to be borne by the contractor.

## **17.5. Statute-of-limitations**

The statute-of-limitations is 2 years from the faultless acceptance insofar as not otherwise agreed in an individual contract. Longer legal statutes-of-limitations shall remain unaffected. In case of subsequent improvements or new or substitute service the statute-of-limitations for this service shall begin to apply new on the date of the renewed written acceptance declaration. If no renewed written acceptance declaration is carried out the statute-of-limitations shall begin with the commissioning of the replaced / improved parts.

## **17.6. Interruption to the statute-of-limitations**

The statute-of-limitations shall be extended by the duration of this interruption for all services, which cannot be used as envisaged in the contract owing to an interruption to operation due to subsequent improvement work.

## **17.7. Burden of proof**

The contractor shall bear the burden of proof for the fact that defects do not fall under the claims for defects, it in particular does not bear any fault with regard to the defect or any other fault.

## **17.8. Experts**

Costs for experts for the purpose of determining defects shall be for the expense of the party which loses. The contractor has to make an advance payment to the expert. The expert is to be appointed by the contractor by mutual agreement with MRW. If no agreement is reached the locally responsible Chamber of Commerce shall decide on the person of the expert.

# **18. PRICES, PRICING**

The agreed prices are, insofar as not otherwise agreed in an individual contract, fixed prices and are deemed free MRW assembly site. Insofar as not otherwise regulated as per contract, they include all costs and secondary costs, which may be incurred in connection with the execution of the order. The applicable rate of value added tax is to be disclosed separately.

A corresponding bank guarantee is to be furnished by the contractor at the request of MRW in case of advance/instalment payments or partial amounts agreed in an individual case.

# **19. SETTLEMENT, PAYMENTS, ASSIGNMENT OF CLAIM, OFFSETTING / RETENTION**

## **19.1. Invoicing**

Invoices are to be sent in a transparent manner and verifiable to the billing address stated in the order. Should no billing address be stated in the order the contractor shall receive it from its contact of MRW immediately upon request. The order/ release order number, if applicable the delivery note number, are to be clearly stated on the invoice. If there is no order or release order number then the name of the contact and his personnel number are to be stated. Disadvantages, which are suffered by incomplete details, shall be for the burden of the contractor.

MRW reserves the right to return invoices, which do not comply with the afore-mentioned requirements and the requirements under value added tax law (§ 14 UStG [German Value Added Tax



Act]), without having been processed at the costs of the contractor. In this case the invoice shall be deemed as not issued.

MRW reserves the right apart from orders placed at flat rate prices, to carry out a follow-up calculation, which covers instalment payments made and still outstanding amounts. The contractor shall have over the documents which are necessary in this respect to MRW.

## **19.2. Payments**

If no special regulations were agreed upon concerning maturity in the order or the agreement then the payment shall be made within 30 days with means of payment at the choice of MRW, in particular by bank transfer. No consent is granted for the direct debit procedure.

The deadlines shall apply from receipt of the invoice, however not before receipt of the goods by MRW or in case of services not before their acceptance and, insofar as the scope of services includes documentation and inspection certificates, not before their hand-over to MRW as per contract. The acceptance of the counter-performance shall be done no later than 15 days after receipt of the counter-performance.

The payment is made subject to the reservation of a verification of the invoice by MRW.

## **19.3. Right to rejection by MRW**

MRW is entitled to reject invoices which have not been properly specified.

The same shall apply to invoices, which do not comply with the contractual terms of payment.

## **19.4. Assignment of receivables**

Receivables due from MRW may only be assigned with the written consent of MRW.

## **19.5. Offsetting /retention**

The contractor can only withhold services or declare offsetting owing to counter-claims recognised by MRW or final and binding counter-claims. Deductions such as in particular credit notes, which have not been explicitly agreed, shall not be recognised.



# **20. WORK ACCORDING TO REQUIRED TIME**

## **20.1. Specification of the invoice amount**

In case of work according to time required, insofar as not otherwise agreed in an individual contract, the invoice amount is to be specified, i.e. the following are to be stated separately:

1. Number and qualifications of the assigned personnel
2. The workdays (according to date), the hours of work and the settlement price
3. The hours of travel
4. The travelling costs
5. Number of days and the accommodation allowance rate
6. Hardship allowances
7. Individual prices for possibly delivered parts
8. Rent for assembly devices
9. Freight costs.

The freight documents are to be enclosed with the invoice when calculating the freight costs.

An offer must be available or an agreement be reached concerning the settlement prices and the secondary costs before commencement of the work.

## **20.2. Time sheets**

The contractor has to have the executed services confirmed daily in writing by the MRW project management. Subsequently submitted time sheets or time sheets which have not been signed shall not be recognised. A time sheet signed by both parties is merely an indication for the fact that these hours were worked. The original of the confirmation is to be enclosed with the invoice. A further official

copy of the confirmation is to be handed over to the MRW project management. The working hours and possibly hardship allowances are to be listed day by day in the confirmation.

Other costs or expenses noted on the proof of assembly by the personnel of the contractor shall not be recognised by the service confirmation of the MRW project management.

### **20.3. Costs for setting up the assembly site**

The costs for assembly site equipment and assembly apparatus in case of flat rate orders are included in the flat rate price, with assemblies, which are settled according to time required, are included in the settlement price.

## **21. CUSTOMS PROVISIONS**

The contractor shall provide support with the customs clearance formalities and in particular make the necessary documents, such as e.g. invoice, proof of preference, available to MRW in time.

## **22. SUPPLIER'S DECLARATION / SAFETY DECLARATION**

The contractor undertakes to submit a supplier's declaration or a certificate of origin in line with the provisions under customs law.

If a long-term supplier's declaration is submitted the contractor undertakes to inform immediately MRW of each change to the properties of the goods, which are of relevance with regard to the regulations concerning the preferential origin of goods, and without a prior request.

The contractor shall be liable for all damages, which arise from the inaccuracy of the contents, the improper form or the late submission of the declarations which was not the fault of the contractor.

The contractor confirms that it possesses, has applied for or will apply for the status of an authorized trader (ZWB/AEO) with the certificate AEO S or AEO F.

Contractors, which currently do not satisfy the afore-mentioned pre-requisites, undertake to satisfy the following stipulations within the meaning of the AEO:

- that goods, which are produced, stored, transported, delivered to or taken over by these by the order of authorized traders (AEO),
  - are produced, stored, processed and laden at safe permanent establishments and at safe transshipment locations
  - are protected against unauthorized accesses during the production, storage, processing, loading and transport
- that only reliable personnel are used for the production, storage, processing, loading, transport and take-over of such goods
- that business partners, who act by order of the contractor, are informed of the fact that they also have to take measures in order to secure the afore-mentioned supply chain.

The supplier undertakes to inform MRW of each change, which is of relevance with regard to the safety requirements according to AEO, immediately and without a prior request. The contractor shall be liable for all foreseeable damages which are typical for the contract, which arise from the non-compliance with the stipulations within the meaning of AEO, shall indemnify MRW in the event of the assertion of a claim by third parties and reimburse MRW the fines ensuing from the facts and other costs upon first request.

### 23.1. MRW shall make the following available free of charge:

1. Building water from the transfer point (in line with the local pressure circumstances)
2. Compressed air  
The provision of compressed air requires an agreement in an individual contract.
3. The transfer point for electrical energy according to VDE 0100 for the supply of the electrical operating resource on the assembly site either in the form of an infeed point or by a 380 V three-phase current device or by a 220 V one-phase alternating current plug connection.  
Set-up of the electrical infeed points near the assembly site by paying attention to the local circumstances. The feeding network satisfies the conditions for protective earth conditions according to VDE 0100.  
Individual connection values > 2 kW require a regulation in individual contract.
4. The required electrical output for all assembly site equipment, office, accommodation and material rooms is to be stated in time.
5. Warranty is not assumed for uninterrupted energy supply, compressed air and water.  
Claims for damages owing to interruptions to operation as a result of interruption to the power supply and for further indirect damages are excluded – insofar as they are not due to wilful intent or gross negligence and not to the breach of essential contractual duties.
6. The contractor shall be liable for damages, which were suffered as a rule of non-compliance or owing to omitted care and attention by the use of services made available to MRW.

### 23.2. Use of tools

#### 23.2.1. Consent

The use of tools and equipment of MRW such as e.g. fork lift trucks, welding devices, hoisting gears, etc. (hereinafter “object on loan”) by the contractor as borrower within the framework of the satisfaction of its obligations existing towards MRW as lender requires the explicit consent of MRW.

The object on loan may only be used on the plant site. The contractor has to inform MRW where it uses the object on loan and where it stores the object on loan. The contractor is not entitled to sub-let the object on loan.

#### 23.2.2. Period of loan

The period of loan shall begin with the hand-over of the object on loan to the contractor and end with the return to MRW. The receipt and return are to be documented accordingly. The condition of the object on loan at the time of the hand-over is to be recorded. MRW can request that the object on loan is returned at all times.

After expiry of the period of loan the contractor undertakes to return the object on loan immediately. During the period of loan the contractor shall ensure a careful handling and bears the risk that the object on loan is lost.

#### 23.2.3. Safety provisions

The contractor has to inspect the object on loan directly after the receipt for its functional capability, completeness and suitability for the envisaged activities. A use is prohibited if the contractor determines that the object on loan is not (no longer) suitable for the envisaged, proper use.

The contractor has to comply with all applicable safety regulations and safety instructions with the use of the object on loan and ensure that the persons authorized by it also satisfy these obligations when using the object on loan. Upon request the contractor has to prove towards MRW that it carried out the safety instructions.

Insofar as special licences or permits are necessary for the operation of the object on loan the contractor has to ensure that these are available and valid.

#### 23.2.4. Liability

All liability of MRW or one of its legal representatives or vicarious agents shall cease to apply to damages caused by accidents and other – also indirect - damages, which are suffered by the use,

insofar as there is neither wilful intent, nor gross negligence and the damages are not due to the breach of obligations which are essential for the contract. For damages which are due to gross negligence on the part of MRW or one of its legal representatives or vicarious agents, the liability is limited to the foreseeable and typically suffered damages. A liability of MRW in case improper use of the tools by the contractor is excluded.

## **24. NON-DISCLOSURE OBLIGATION – DATA PROTECTION**

### **24.1. Non-disclosure obligation of the contractor**

The contractor undertakes in its and in the name of its employees to maintain strict secrecy with regard to all MRW-internal information, which is transmitted, acquired or becomes known over the course of the fulfilment of the contract, the knowledge of the plants, local conditions, production processes and the "know-how" from MRW or by contacts with MRW employees. This shall in particular also apply to drawings, construction documents, internal data, etc.

All business and technical information made accessible by MRW, in particular knowledge about plants, local conditions, production processes and the "know-how" of MRW is to be kept secret towards third parties and may only be made available to such persons in the plant of the contractor, who necessarily have to be used for its use for the purpose of executing the order and who are also obliged to non-disclosure.

This obligation shall not refer to information, which was already generally accessible at the time of its notification, which becomes generally accessible without a direct or indirect assistance of the contractual partner receiving the information, which was as proven already known to the other contractual partner without a breach of the non-disclosure obligation or which was as proven transmitted to the other contractual partner by a third party authorized to announcement.

### **24.2. Non-disclosure obligation of the personnel used by the contractor**

Upon request of MRW the employees of the contractor are to be obliged to strict secrecy in writing. The duplicate of the non-disclosure obligation sheet to be signed by the employees of the contractor is to be handed over to MRW before commencing the work for the first time insofar as this is requested by MRW in an individual case. The contractor undertakes to comply with all instructions of MRW with regard to the confidentiality and secrecy or to ensure their compliance. It shall also impose the same non-disclosure obligations upon possible subcontractors in writing.

Accordingly the direct or indirect forwarding of all information stated in Subclause 24.1. to third parties as well as each advertising or citation as a reference about the business relationship is forbidden unless MRW has granted its prior written consent in this respect.

### **24.3. Extended effect of the non-disclosure obligation**

The obligation for strict non-disclosure shall also continue to exist for at least five years after termination of the order.

### **24.4. Breach**

A breach of the afore-mentioned obligations shall render the contractor liable to damages and may have consequences under criminal law for it.

### **24.5. Data protection**

Michelin Reifenwerke AG & Co. KGaA or a Michelin company with registered seat in Germany or personal data relating to third parties, of which the contractor gains knowledge in connection with the order, may only be processed and used for processing the order and the thus associated services. The data may not be forwarded to third parties.

The contractor undertakes to take all technical and organisational measures which are necessary for data protection and for the data security within the meaning of § 9 Federal Data Protection Act (BDSG). The employees are to be obliged to the data secrecy within the meaning of § 5 BDSG.

If the order also comprises the processing of personal data, the contractor and MRW shall sign an agreement concerning the order data processing according to § 11 BDSG or a corresponding agreement for the assignment of functions.

Documentation, which serves the proof of the proper data processing in line with the order, is to be stored by the contractor beyond the end of the contract in line with the respective storage deadlines. The contractor can hand it over to MRW for its relief at the end of the contract.

The contractor is informed that personal data are stored and processed at MRW according to the regulations of the BDSG. In particular personal data, of which MRW gains knowledge in connection with the business relationship with the contractor, are used within the framework of the business relationship and to process this business relationship and the thus associated services.

The contractor is in addition informed that its data are transferred to third countries for the purpose of processing the business relationship. The data are transmitted based on the corresponding European contractual terms and conditions and by taking the relevant protective provisions under data protection law into consideration. The contractor is entitled to request information at all times about its data stored at MRW. Requests for information are to be sent to:

Postal address: Michelin Reifenwerke AG & Co. KGaA, data protection, P. O. Box 210951, 76159 Karlsruhe  
Telefax: +49-(0)721-2966, e-mail: [Datenschutz@de.Michelin.com](mailto:Datenschutz@de.Michelin.com).

## 25. DISPOSAL

Residual and demolition materials are to be removed by the contractor at its costs insofar as not otherwise agreed in an individual contract.

## 26. CLEANING OF THE ASSEMBLY SITE

### 26.1. Cleanliness and order of the assembly site

The assembly site is always to be kept in a clean and cleared condition by the contractor. Production machines are to be protected by the contractor (covers, etc.) to the extent that no contamination is possible.

In case of the non-compliance with this condition MRW shall arrange for the cleaning of the assembly site for the expense of the contractor.

### 26.2. Storage of assembly parts and devices

The assembly parts and devices are to be stored accident-proof, otherwise they can be driven away or properly stored by MRW at the costs of the contractor. After completion of the assemblies the assembly locations are to be cleared immediately and left behind in an impeccable condition.

## 27. LIABILITY OF THE MRW TERMS AND CONDITIONS FOR WORK AND SERVICES CONTRACTS

### 27.1. Escape clause

Should individual provisions of these MRW Terms and Conditions for Work and Services Contracts prove to be invalid or feature loopholes this shall have no effect on the validity of the contract on the whole. In this case the contractual partners undertake to agree upon a regulation to replace the invalid provision, which shall as far as possible correspond with the intention of the parties. The same shall apply to loopholes in the contract.

## **27.2. Deviations**

The deviations from these MRW Terms and Conditions for Work and Services Contracts agreed if applicable with the contractor in an individual order shall not represent any prejudice for future orders and shall not lead to any change to the interpretation of these terms and conditions.



## **28. PLACE OF PERFORMANCE, PLACE OF JURISDICTION, APPLICABLE LAW**

### **28.1. Place of performance**

The place of performance of the services is the MRW assembly site, with payments the registered seat of MRW unless otherwise agreed in an individual contract.

### **28.2. Place of jurisdiction**

The place of jurisdiction is Karlsruhe. However, MRW reserves the right to file action against the contractor at the court of jurisdiction for the place of performance. The contractual parties have to reach an amicable settlement before taking recourse to the courts of law.

### **28.3. Further details**

In case of interpretation questions, the German version of these Terms and Conditions shall apply. Contract language is German.

The law of the Federal Republic of Germany shall apply exclusively. The applicability of the UN Convention on the International Sale of Goods (CISG) is excluded.

## PART II: SAFETY AND HYGIENE

Should the contractor have to provide services in a plant or location of a Michelin company with registered seat in Germany (in particular Michelin Reifenwerke AG & Co. KGaA and Laurent Reifen GmbH, hereinafter "MRW") with the exception of Euromaster GmbH, the following terms and conditions concerning safety and hygiene are to be complied with.

### 1. Coordination of work

#### 1.1. Appointment of the coordinator in writing

According to BGV A1 "principles of prevention" § 6 MRW shall, if several contractors are occupied on one assembly site, appoint one person (coordinator) in writing, who coordinates the work in order to avoid a possible reciprocal danger; the contractor has to confirm this appointment in writing. Should no coordinator have been appointed yet at the commencement of such work the contractor shall work towards its appointment by MRW.

The coordinator has an authorization to give instructions towards the contractors and their employees in all questions relating to safety. Other safety experts of MRW are also authorized to give instructions in questions relating to safety towards the contractor and its employees.

#### 1.2. Responsibility of the contractor

The authorization of MRW to give instructions in questions relating to industrial safety shall not release the contractor from its responsibility for its own employees.

The contractor undertakes to ensure the notification and instructions of its personnel which are necessary according to BGV A1 "principles of prevention" § 4.

#### 1.3. Newly-added contractors

If several contractors are occupied on one assembly site then each newly added contractor has to examine whether the protective measures chosen by it are in line with the already existing ones and do not render existing measures invalid. It has to contact the safety coordinator at its own initiative.

### 2. Industrial Safety

#### 2.1. Inspection before the start of the execution of the order

Before the start of the execution of the order an inspection is necessary by the authorized agent of MRW and the responsible person of the contractor if applicable with the participation of the local safety department (EP) of MRW, with which reference is to be made to the special dangers and points of danger and the possibly existing relevant inhouse safety instructions for the work which is to be carried out which go beyond this part II, e.g. the information leaflet concerning safety measures with work involving fire hazards.

#### 2.2. Applicable safety regulations

The statutory industrial protection regulations which are relevant for the work which is to be carried out, the accident prevention regulations of the trade associations, the general safety-technical and occupational medicine rules as well as the inhouse safety instructions existing beyond this shall apply to the contractor, its personnel and the personnel of the suppliers and subcontractors. The contractor is responsible for the corresponding information and for the fact that in the event of the assignment of the order to third parties these also inform themselves about and comply with these safety provisions.

### **2.3. Breaches of safety regulations**

The group of persons named in Subclause 2.2 has to comply with the provisions contained in this part II and the inhouse safety instructions possibly existing beyond this. It is essential to follow the orders of the authorized agent of MRW and its safety department. In case of breaches of safety regulations, organisational instructions of the MRW project management or the safety department of the plant the infringing party can be forbidden from entering the plant; in these cases MRW additionally reserves the right to dissolve the contractual relationship.

The contractor has to exclude all persons from the execution of the order, who infringe the provisions named in this part II or the presence of whom appears inappropriate to MRW owing to misgivings about safety.

### **2.4. Protection of processing products**

When executing the order it is essential that the contractor pays attention and take corresponding precautionary measures to ensure that processing products are not impaired, e.g. caoutchouc by dust, wire by contact.

### **2.5. Hazard to the safety**

In case of a hazard to the safety of the personnel, third parties, the building, the plants, machines and other equipment which arises in connection with the execution of the order the work is to be discontinued immediately if the safety cannot be guaranteed in any other manner.

### **2.6. Report of important incidents / industrial accidents**

In case of important incidents from the field of industrial protection (e.g. accident), the plant protection (e.g. theft), the fire prevention (e.g. incipient fire) and the environmental protection (e.g. interference by leakage) the contractor principally also has to inform the safety department of the plant immediately in addition to the MRW project management. In addition, it has to assist with the comprehensive clarification of these incidents.

In line with BGV A1 " principles of prevention" the contractor is obliged towards MRW with occurred industrial accidents to report each injury – also apparently insignificant - or effects of substances which pose a danger to the health in the plant to the MRW project management and the safety department of the plant immediately in order to ensure the proper first aid of the injury person.

The supervisory personnel of the contractor has to ensure that a proper accident report is immediately submitted to the trade association, at which the contractor is insured. A copy of this accident report is to be sent to the safety department of the MRW plant through the MRW project management.

The contractor shall supply more detailed information for the calculation of the frequency rate and severity ratio with regard to industrial accidents of employees of the contractor or third party workers assigned by it who were assigned on site, to the head of the environmental and safety department of the MRW plant or MRW location following a corresponding enquiry monthly and/or at the end of the order. This in particular includes the following information: Total hours of work on site, total industrial accidents with interruption to work, the total industrial accidents without interruption to work however with the requirement to involve external help as well as the total number of days with interruption to work – details based on the respective started period of time/periods of time.

### **2.7. Ban on alcohol and intoxicants**

Bringing alcoholic drinks of all kinds or other intoxicating agents onto the plant site as well as their consumption are prohibited. The employees assigned by the contractor and third party workers are also forbidden from commencing the work in an intoxicated condition. If they breach this ban on alcohol and intoxicants MRW is entitled and the contractor obliged to expel them from the plant site.

### **2.8. Use of recreational, washing and shower rooms**

The recreational, washing and shower rooms of MRW may only be used with the consent of the department concerned. They are to be treated carefully and as intended.



## **2.9. Protective equipment**

According to BGV A1 "principles of the prevention" § 29 the contractor is obliged to make the necessary personal protective equipment (PSA), such as e.g. anti-static safety shoes, protective gloves, protective goggles, ear protectors, facial protection and protective helmet, available.

The contractor has to ensure that this protective equipment is worn and kept in an impeccable condition according to the regulations.

If personal protective equipment is necessary, which is to protect against fatal dangers or permanent health damages, the contractor has to ensure the instructions which are necessary according to BGV A1 "principles of prevention" § 31 by training.

## **2.10. Installation of information signs**

The contractor is responsible for the legal duty to maintain safety. For this purpose it has to install and keep in reserve warning, information, requirements and prohibition signs. Road and track blocks must be applied for at the MRW project management.

Assembly openings must be secured against falls at all times. Changes to platform covers may only be carried out by coordination with the MRW project management.



## **3. Access / plant traffic**

### **3.1. Compliance with the applicable regulations**

The contractor has to comply with the regulations which are respectively applicable for the access to, time spent on and leaving the plant site, in particular the actual and valid regulations at MRW concerning the environmental obligation of the respective plant or location, which MRW will be pleased to make available upon request. In case of repeated breaches the safety department can issue a plant ban.

### **3.2. List of persons with access authorization**

The contractor has to hand over a list of its employees as well as the employees of subcontractors to the MRW project management before carrying out the assembly work in order for the access authorization to be examined when entering the plant. The corporate names of possible suppliers are to be named. Changes are to be reported immediately.

### **3.3. Vehicle controls**

All vehicles of the contractor or of third parties entering and leaving the site can be controlled by the safety department at all times. The same shall apply with a concrete case of suspicion to checks of persons.

### **3.4. Location of vehicles on the plant site**

Vehicles of the contractor or of third parties, which are laden or unloaded, are to be removed from the plant site after termination of the loading process. Merely workshop vehicles, which are required to execute the order, may remain on the plant site continuously. They are to be reported to the gate when driving into the site. They are to be parked so that the other pedestrian and vehicle traffic are not impaired; if applicable certain stopping places will be allocated by the safety department.

Hydrants, shut-off valves, extinguishing water infeeds, building electricity distributors, rescue devices, emergency exits and similar items may not be blocked.

### **3.5. Compliance with the traffic regulations**

The road traffic regulations apply on the plant site. Special traffic regulations and signs, such as e.g. the maximum speed stated at the plant gate, are to be complied with.

### **3.6. Ban on bringing certain objects**

Animals, radio devices, cassette recorders and other reception and broadcasting devices, which are not firmly installed in vehicles, may not be brought onto the plant site. The use of hand walkie talkies on the plant site requires the prior release by the safety department of the plant.

Mobile telephones may not be used in the production and warehouse halls near machines.



## **4. Secrecy**

### **4.1. Access to the work zones**

The contractor may only access the work zones, in which it has to perform work directly. The access to the work zones may only be carried out after the prior report to the responsible person of the work zone and only by the stipulated entrances. Only the route instructed by the safety department is to be used to reach and leave the place of work.

For reasons of safety and secrecy it is principally prohibited to move on the plant site outside of the allocated areas.

### **4.2. Ban on taking photographs**

Recordings of all kinds on the plant site (photo, video, film) are banned. Cameras and film cameras, etc. may only be brought onto the plant site with the previously granted written permission of MRW. The plant protection is entitled to control photo or film devices including camera phones, taken onto the plant site without permission to check whether no photo or film recordings were taken on the plant site and if applicable to delete these. The latter shall also apply if the plant protection cannot determine whether such recordings were made.

### **4.3. Safeguarding of business and trade secrets**

The contractor has to maintain secrecy towards third parties – also after termination of the order – with regard to the order, the knowledge of the local site, the mechanical systems, the production processes and other important information, of which it becomes aware owing to the execution of the order.

At the request of MRW the contractor shall have personal non-disclosure obligations signed by its employees and handed over to the MRW project manager.



## **5. Fire prevention**

### **5.1. Ban on open flame**

MRW shall inform the contractor where there is increased risk of fire in the plant (this is the case in almost all production and warehouse halls). Therefore, open flames, e.g. heating furnaces, bitumen boilers, hot air heating with direct flame, electrical heating devices, are principally forbidden. Exceptions are to be approved by the safety department in writing in advance. The conditions possibly stipulated hereby are to be strictly complied with by the contractor.

### **5.2. Report of work which poses a fire hazard**

All work falls under the term "work which poses a fire hazard", with which sparks or heat are produced and there is a risk of ignition, e.g. grinding, flame cutting, welding, soldering, pre-heating. Work which poses a fire hazard may only be carried out after the prior report to the safety department and after its written permission. The safety department decides whether a constant fire supervision is necessary and whether other precautionary measures, e.g. removal or covering of flammable materials, fire extinguishers on site, a connected steel pipe, are to be taken. The contractor has to follow the instructions of the place fire service.

If such conditions exist then the contractor has if applicable to provide the personnel which are necessary for this purpose and the necessary devices.

### **5.3. Flammable liquids and dust**

Before commencement of the work in the vicinity of or when handling flammable liquids (benzine, solvents, etc.) or flammable dust (e.g. fine dust of chemicals) special safety measures are to be taken by coordination with the safety department of the plant.

### **5.4. Compliance with the ban on smoking**

The bans on smoking respectively existing on the plant site are to be strictly complied with. In case of infringements a plant ban may be issued. They shall not be revoked either by the approval of open flames or work which poses a fire hazard.

### **5.5. Rescue routes and rescue equipment**

The emergency exits, escape and rescue routes as well as all doors and gates and the accesses to First Aid equipment are to be kept free. The use of the fire prevention and First Aid equipment is only permitted in the event of danger. The safety department is to be informed immediately about the use.

### **5.6. Heating of day accommodation and material rooms**

The heating of assembly huts, accommodation and material rooms on building or assembly sites may only be operated with the consent of the MRW project management.

The following conditions are to be complied with when using electrical heating:

Only closed heating devices may be used, e.g. oil radiators. Insofar as requested by the safety department only heating devices may be used, which are suitable for permanent establishments with a risk of fire. The using heating devices must be created to the extent that their surface temperature during normal operation does not exceed 115°C. This demand is e.g. satisfied by heating devices, which are suitable for permanent establishments with a risk of fire (see VDE 0100/5.73, § 50). Only oil radiators, and only such with temperature controllers or safety temperature limiting devices, may be used as mobile heating devices. The placing of objects on the radiator surface is also to be strictly prevented with these heating devices.

The heating may only be operated during the working hours. Should a heating device be operated overnight this must be approved separately by the safety department upon application. Assembly huts and other accommodation rooms must be equipped at least with a 6 kg power extinguisher for the fire classes A, B, C and D.



## **6. Electrical-technical equipment**

### **6.1. Equipment of MRW**

The contractor may not carry out any work on the electrical-technical equipment of MRW without the prior coordination with the MRW project manager. This shall also apply to the use and replacement of fuses.

### **6.2. Report of defects**

The contractor has to report complaints about this equipment before the commissioning and defects, which occur during the operation, immediately.

### **6.3. Inspection by MRW**

MRW is entitled to inspect the electrical-technical equipment of the contractor for their proper condition without assuming responsibility hereby.

## 6.4. Faulty devices / lines

Devices and lines which are not impeccable are to be removed immediately or established according to the regulations; otherwise the power supply can be blocked until the establishment of the proper condition.

## 6.5. Use of devices of the contractor

The electrical machines and devices of all kinds used by the contractor must comply with the VDE provisions which are relevant for the place of work concerned and, if necessary, satisfy the explosion protection provisions. The connection is carried out at the MRW-own plug connections secured by an FI protective switch; depending on the requirements a building current distributor will be installed by MRW. All electrical machines and devices are to be switched off at the end of the work and secured against improper use.

The erection and maintenance of the electrical systems from the infeed point has to be carried out according to VDE 0100, VDE 0105 and according to corresponding instructions of the MRW project management.

The same shall apply to the execution of protective measures with indirect contact according to VDE 0100 from the infeed point during the whole duration of operation as well as the set up and maintenance of the lighting which is necessary for the execution of the assembly work including the workplace lighting by the contractor.

## 6.6. Activation

If activations (electricity, water, compressed air, vapour, etc.) are necessary for work then the work may only be started after release by the MRW project management.



## 7. Cables and lines

Attention is to be paid to the following in order to prevent damages to cables and lines: Cables are in any case to be considered as live and may not be exposed to mechanical demands.

Suspended scaffolding for cables, cable protection and safety equipment may not be changed by the contractor without any order.

Walking on suspended cable racks or comparable brackets is prohibited.

If cables or lines are found in the ground during assembly work then the MRW project management is to be informed immediately. The work in the vicinity of these cables is to be suspended until further instructions are given on the part of the MRW project management.

Before the start of assembly work as well as before the pile driving of sheet pile walls, posts, anchoring, etc. the contractor must inform itself at the MRW project management about the location of possible cables and lines existing in the ground. See also VDE 0105 1/7.83 Subclause 4.1.3: "Before the start of civil engineering work the person who is responsible for this work must obtain information about cable and line routes."

The contractor shall receive from MRW, if necessary, a site plan with details about underground energy and other lines. The afore-mentioned work may only be carried out with the prior written consent of the MRW project management. The approval declaration with site plan must be available at the assembly site. The contractor undertakes to announce its contents to all workers involved in the work and to pay attention that the conditions are complied with.

Changes to the method of work require a renewed agreement.

After removing the cable covering stones no pickaxes may be used any more in the direct area of the cables.

Civil engineering work in the area of high voltage cables outside of the working hours of the MRW plant are to be reported to the MRW project management at least 24 hours in advance.

They may only be started after their release.

All damages to cables by solvents and caustic liquids (acids, leaches, ammoniac, etc.) are to be avoided. It is prohibited from covering cables or lines with concrete.

First measures with the damage to a cable:

- Secure damaged location in a range of at least 10 m radius.
- Cable fires are only to be fought with dry fire extinguishers or with dry sand as far as possible.



## 8. Environmental protection

### 8.1. General information

The contractor shall inform its employees based on the documents handed over to it about the plant-internal regulations and conditions concerning the subject of environmental protection.

The contractor has to ensure towards MRW and third parties that all measures are taken at its costs in order to minimise disturbances by the execution of its work, e.g. noise, dust, vapours, exhaust gases, as far as possible.

In case of foreseeable, however unavoidable disturbances of all kinds the MRW project manager is to be informed about the type and duration of the interference in time in advance.

### 8.2. Substances and preparations

The use of chemical substances and preparations is carried out by complying with the relevant laws, in particular the REACH and the GHS/CLP regulation and requires the prior consent of the safety department of the plant.

For this purpose the corresponding actual safety datasheets are to be made available to MRW before the first use if applicable with exposition scenario within the meaning of Annex II of the REACH regulations in German as well as upon request in further languages under [msds-germany@de.michelin.com](mailto:msds-germany@de.michelin.com).

The supplier of products undertakes to inform MRW immediately if a product delivered by it with more than 0.1 % of its mass contains one or more substances of Annex XIV of the REACH regulations or the list of candidates of the ECHA (substances of very high concern).

In case of significant changes the safety data sheet is to be sent to MRW by the contractor immediately once again without a request by stating the date of the update. The safety data sheet is to be renewed by no later than after 5 years.

If it concerns substances or preparations which pose a danger to the employees of MRW, third parties or the environment then special protective measures are if applicable to be agreed. This shall in particular apply to hazardous substances or substances which pose a danger to the water.

With the storage and handling of substances which pose a danger to the water the relevant statutory provisions are to be complied with. The storage of substances which pose a danger to the water or flammable substances is carried out by coordination with the safety department, which allocates a suitable storage location.

The contractor is responsible for all damages, which are suffered as a result of incorrect details in the binding declarations or because existing regulations were not complied with in the handling (packaging, shipment, storage, etc.) of hazardous goods as well as chemical substances and preparations.

### 8.3. Waste water

The contractor shall inform the safety department in writing about the upcoming occurrence of waste water before commencement of the work.

To be stated are:

- a) Quantity of waste water per hour

- b) Duration of the occurrence of waste water, e.g. workday, week, etc.
- c) Kind of water contamination (pollutants).

The discharge of substances which pose a danger to the water into the sewer is prohibited.

A qualified disposal is to be ensured.

The discharge of waste water into the storm sewer is prohibited.

#### **8.4. Waste**

The contractor undertakes to comply with the principles of the MRW waste management:

- Waste is principally to be avoided.
- Unavoidable waste is to be recycled.
- Non-recyclable waste is to be disposed of environmentally-friendly.

It is the duty of the contractor to dispose of

- Waste from material deliveries, e.g. packaging (carton, wood, foamed polystyrene, etc.)
- Residues and waste, which are produced by the execution of the order (e.g. building debris, wood, coloured, metal, etc.).

The costs incurred for the afore-mentioned disposal shall be borne by the contractor.

It is the duty of MRW to dispose of residues or waste, which is available with the commencement of the work in the working field of the contractor. The MRW project manager is to be informed hereof immediately.

The costs incurred for this disposal shall be borne by MRW unless otherwise agreed in an individual contract.

Substances which pose a danger for the water, which is located in the plants, containers, pipelines, etc. which are to be dismantled, must be transferred to a qualified disposal by the contractor.

The transport of waste in containers of MRW shall only be carried out after the written agreement about the type and quantity with MRW. A copy of the agreement is to be forwarded to the safety department of the plant.



### **9. Use of the company doctor service of MRW**

Employees of third party companies may use the company doctor service of MRW in emergencies.