



***GENERAL TERMS AND
CONDITIONS OF PURCHASE
(VIETNAMESE)
2019***

PURCHASING OPERATIONAL DIRECTION

TERMS AND CONDITIONS OF PURCHASE

1. This Terms and Conditions of Purchase (“**TOC**”) shall apply to any Purchase Order (“**PO**”) used by Michelin for the supply of goods and/or services (collectively “**Goods**”).
2. Where there is any conflict between the terms and conditions in this TOC and the PO, the terms and conditions of this TOC shall prevail. In the event that the Supplier has entered into a supply contract with Michelin, the terms and conditions of the supply contract shall prevail. Where there is a conflict, discrepancy or ambiguity in any of the documents, the Supplier shall immediately seek clarification from Michelin and shall act in accordance with the instructions of Michelin.
3. **Supply and Scope of Goods**

The Supplier agrees to supply the Goods as stated in the PO, any applicable specifications supplied by Michelin, including but not limited to Michelin’s purchasing code, available at the following website <<http://purchasing.michelin.com/Document-Area>>, and any applicable amendments made by Michelin from time to time at its sole discretion. The terms and conditions contained herein shall apply to the provision of the Goods to the exclusion of any other terms on which any quotation has been given to Michelin.
4. **Price and Payment**
 - 4.1 The price and terms of payment shall be as stated in PO and shall be inclusive of any applicable tax and charges relating to the supply. No increase in the price may be made at any time without the prior written consent of Michelin. Unless otherwise expressly agreed, the Supplier shall be responsible for all costs and expenses incurred with the provision of the Goods.
 - 4.2 Unless otherwise stated in PO, the Supplier may invoice Michelin on or within 30 days after the delivery of the Goods and each invoice shall quote the PO.
 - 4.3 Michelin shall pay the price for the Goods in accordance with the payment terms, except where Michelin:
 - 4.3.1 retains part of the price pursuant to Clause 5.5; or
 - 4.3.2 disputes the invoice, in which case Michelin will pay the undisputed part of the relevant invoice (if any) and dispute the balance. Michelin will pay the agreed amount upon such resolution of the dispute.
 - 4.4 If any part or the whole of the Goods are not performed, are delayed, are not satisfactorily performed, then, without limiting any other remedy, Michelin shall be entitled to:
 - 4.4.1 deduct a proportionate amount of the price;
 - 4.4.2 set-off a proportionate amount of the price against any sums owed to Michelin by the Supplier under any agreement; or
 - 4.4.3 (if Michelin has already paid the price) to claim from the Supplier by way of liquidated damages, calculated on daily basis from the scheduled date of delivery until the date of actual performance of the Goods **PROVIDED ALWAYS** that the amount of liquidated damages shall not exceed the price of the Goods.

This does not limit Michelin’s right to seek other remedies against the Supplier.
5. **Performance**
 - 5.1 The Supplier shall comply with all instructions given by Michelin in the performance of the Goods and comply with any applicable performance indicators (“KPI”) and/or service levels agreed between the Parties (if any).
 - 5.2 Notwithstanding any instructions that may be given by Michelin pursuant to Clause 6.1 above, the Supplier shall not be relieved from its responsibilities and liabilities under this TOC.
 - 5.3 If the Goods are not supplied in compliance with the TOC to the satisfaction of Michelin, Michelin will inform the Supplier in writing of such non-compliance and the Supplier shall take such steps as are necessary to remedy such non-compliance to the satisfaction of and within the timeframe specified by Michelin, failing which, Michelin may treat the PO as discharged by the Supplier’s breach and require the repayment of any part of the price which has been paid to the Supplier.
 - 5.4 During the performance of the Goods, the Supplier shall not interfere with the activities of Michelin while at the delivery address, shall comply with all applicable health, safety and environmental laws and regulations of the local authorities, Michelin’s internal security policy and obtain all such certificates, licenses, consents, permits, approvals and requirements of relevant authorities having jurisdiction in connection with the carrying out of the Goods. Supplier shall ensure that all of its employees possess the relevant immigration and/or employment permits as required by law.
6. **Acceptance of Goods**
 - 6.1 Michelin may reject the Goods which are not performed in accordance with the terms and conditions of this TOC, and shall not be deemed to have accepted the Goods until Michelin has had a reasonable time to review and/or inspect the Goods following the Supplier’s performance or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
 - 6.2 The signing of any document by Michelin confirming completion of the Goods does not prejudice in any way, Michelin’s right to claim breach of any warranty or guarantee provided by the Supplier.
7. **Representations and Warranties**

The Supplier represents and warrants to Michelin that: the Goods will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for Michelin to expect at all times; AND that all materials, images, documents, software, equipment, facilities, methods, techniques and technology (“Materials”) used for the purpose of the performance of the Goods do not and will not infringe any intellectual property rights of any third party and that the Supplier owns or is duly authorised to use such Materials in connection with the performance of the Goods hereunder.
8. **Ownership of Intellectual Property Rights**

8.1 Subject to the applicable laws, any Intellectual Property Rights which are invented, generated from, created, developed or acquired by the Supplier (whether alone or jointly with another party) during or relating to the performance of the Goods shall be the property of Michelin as absolute beneficial owner without any further payment to the Supplier (or any other third party).

8.2 The Supplier hereby assigns and agrees to assign all intellectual property rights referred to in Clause 9.1 above to Michelin or its nominee and further undertakes (at no further cost to Michelin).

8.3 Nothing in this TOC whether express or implied shall be deemed to confer any right upon the Supplier or its employees to apply any trade mark or other Intellectual Property Rights owned or used by Michelin or its affiliates.

9. Liabilities of the Supplier

9.1 The Supplier shall indemnify and hold harmless Michelin, affiliated entities or any designated third parties in full against all actions, claims, demands, liability, loss, damages, costs and expenses (including legal expenses) of any kind, including where the law permits, loss or damage arising out of, or in connection with any damage to property (whether or not owned by Michelin), personal injury, illness or death to any person, arising directly or indirectly from the performance, non-performance or delay in the performance of the Goods provided by the Supplier, any breach of warranty given by the Supplier in relation to the Goods, any claims that any of the activities of the Supplier in relation to the Goods infringe the intellectual property rights of any third party, any liability arising under any applicable legislation or regulations in connection with the Goods and/or any negligence, act or omission of the Supplier or its employees, agents or sub-contractors.

9.2 The Supplier and its sub-contractors must take out and maintain during the period of this TOC insurance in respect of all claims and liabilities arising, whether at common law or under statute relating to workers compensation or employer's liability, from any accident or injury to any person employed by the Supplier in connection with the Goods.

9.3 Neither Party will be liable to the other Party in any circumstances for any indirect, economic, special or consequential loss or damage, including but not limited to the loss of revenue, loss of production or loss of profit.

10. Confidentiality

The Parties and their employees acknowledge and agrees that from time to time, each of them may acquire confidential or proprietary information or materials from each other about the other Party or its business pursuant to or in connection with the performance of this TOC and agrees that it will not divulge, communicate, or make available such confidential information or materials and take sufficient care and precaution with regard to the same at all material times. This obligation shall not apply to information that is required to be disclosed pursuant to any applicable law.

11. Termination

11.1 This TOC shall commence upon the date of signature of the PO or the date the Goods are first provided (whichever is the earlier) and subject to earlier termination pursuant to the terms of this TOC, shall continue in force until the Goods have been delivered or fully performed.

11.2 Michelin shall have the right to terminate this TOC at any time, without liability to the Supplier, by giving the Supplier one (1) months' notice in writing to the Supplier.

11.3 Michelin shall have the right but shall not be obliged to terminate this TOC immediately, without liability to the Supplier by giving the Supplier notice in writing at any time if any governmental licence, permit, registration or approval required in connection with the Supplier's performance or Michelin's purchase of the Goods under this TOC by either the Supplier or Michelin, is withdrawn, revoked or made subject to such conditions which are not acceptable to Michelin.

11.4 Upon the termination of this TOC for any reason whatsoever:

11.4.1 each Party shall forthwith return to the other Party all materials containing the other's (or its affiliated entities') confidential or proprietary information; and

11.4.2 all outstanding payments due from one Party to the other under this TOC shall become due and payable.

11.5 For the avoidance of doubt, notwithstanding the termination of this TOC for any reason whatsoever, the Supplier shall be obliged to honour any and all PO's issued by Michelin prior to the date of the termination, whether or not the Goods pursuant to such PO have been performed.

12. Sub-Contracting

The Supplier will not sub-contract or assign all or any portion of its rights and/or obligations to any third party.

13. Anti-Corruption

Each Party undertakes to refrain from (1) offering, promising or giving intentionally, and from (2) attempting and conspiring to offer, promise or give, any undue pecuniary or other advantage, whether directly or through intermediaries, to any public official or third party, for that official or for a third party to act or refrain from acting in relation to the performance of their duties, in order to obtain or retain business or other improper advantage in the conduct of business

14. Governing Law and Jurisdiction

This TOC shall be governed by, construed and enforced in accordance with the laws of the country of incorporation of Michelin ("Relevant Jurisdiction"). The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the Relevant Jurisdiction.