

## TERMS AND CONDITIONS OF PURCHASE

**1. ORDERS.** This order is an offer by Fenner Dunlop Americas, LLC or any of its affiliates as designated on the face of this order ("Fenner") to the parties to whom the order is addressed ("Seller") to purchase the goods and/or services ("Products") designated on the face of this order or attached writing and shall be the complete and exclusive agreement between Fenner and Seller for such Products. Fenner is a subsidiary of Michelin. The sole manner of acceptance shall be by performance. These Terms and Conditions of Purchase ("Terms and Conditions") supersede all prior representations, communications, quotations, proposals, orders, agreements or understandings with the exception of fully executed supply or pricing agreements. By accepting Fenner's purchase order, Seller has agreed to these Terms and Conditions of Purchase in their entirety (the "Contract"). Confirmation orders, invoices or any other documents submitted by Seller that attempt to modify, add to, or are inconsistent with these Terms and Conditions of Purchase shall not constitute a counter-offer and are deemed to be material alterations of Fenner's purchase order and are expressly rejected and of no force or effect. Acceptance of the Contract is expressly conditional on agreeing to these Terms and Conditions. In no event will Fenner be deemed to have in any way changed, enlarged or modified its liabilities or obligations as fixed by these Terms and Conditions of Purchase except by a written amendment executed by an officer of Fenner. No purchase order is valid unless:

- (i) It is placed on Fenner's official purchase order form, and
  - (ii) Fenner has not withdrawn the order.
- Typographical and/or clerical errors made by Fenner are subject to correction.

**2. PRICES.** All prices are in U.S. dollars unless otherwise noted. Payment may be made within forty five (45) days after receipt by Fenner of the ordered and conforming Products. All prices are quoted Ex Works Fenner's requested delivery destination unless otherwise agreed upon in writing by Fenner. Prices quoted by Seller shall include sales, excise, municipal, state or any other government taxes. All taxes and other governmental charges upon the production, manufacture, distribution, sale or use of the

Products, to the extent required or not forbidden by law to be paid by Seller, shall be paid by Seller.

**3. VOLUME PROJECTIONS AND QUANTITY.** Seller acknowledges that any estimates, forecasts or projections of future anticipated volume or quantity requirements for Products provided by Fenner are provided for information purposes only, may change over time, and are not binding upon Fenner. If quantities and delivery schedules are not specified in the Contract, they will be as reasonably determined by Fenner and stated in Fenner's firm releases issued to Seller from time to time. If Seller is supplying Fenner under a vendor managed inventory system pursuant to this Contract, Seller shall maintain Fenner's supply at required levels as indicated through the vendor managed inventory system at all times during the terms of this Contract.

**4. SHIPPING.** Seller shall use the carrier designated by Fenner. Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Products. Any additional shipping expenses as a result of Seller's backorders or shipments of a lesser quantity than specified shall be paid by Seller unless Fenner authorizes such shipping expenses in writing. The Products shall be properly packed and secured in such a manner as to reach their destination in good condition under normal conditions of transport. Shipping documents, including Seller's invoice, must accompany each shipment and be transmitted to the freight forwarder in a timely manner. Seller shall bear all risk of loss until Products are delivered to Fenner (including off-loading and stacking) and accepted. Fenner shall not be obligated to return to Seller any packaging or packaging materials for the Products, whether or not any Products are accepted by Fenner.

**5. TIME.** Seller shall deliver the Products at the time specified in the Contract which shall be during normal business hours. Fenner, without penalty or liability to Seller, shall have the right to reschedule or postpone any delivery of Products. Time shall be of the essence of the Contract. Seller understands and acknowledges that late or nonconforming delivery will obligate Seller to pay direct, incidental

and consequential damages to Fenner. If for any reason Fenner is unable to accept delivery of the Products at the time when they are due for delivery Seller shall, if its storage facilities permit, store the Products in a secure manner until Fenner is ready to accept delivery and Fenner shall pay Seller's reasonable charges for storage.

**6. CANCELLATION.** Fenner may cancel any purchase order upon written notice to Seller. In the event of such cancellation, Fenner is responsible to Seller only for the cost of any finished goods or work in process that corresponds to Fenner's purchase order.

Termination of the Contract for any reason shall be without prejudice to rights of Fenner accrued prior to termination.

**7. ON-SITE WORK.** In the event that Seller or its representatives are performing installation or other on-site services related to the purchase of any goods by Fenner, then Fenner may issue additional specifications and conditions to such on-site services. Seller shall fully defend, indemnify and hold Fenner, including its directors, officers, employees, agents and representatives (collectively, "Fenner Indemnitees") harmless against all claims, losses, damages, penalties, interest, judgments, settlements, costs, and expenses (including attorney's fees and litigation costs) resulting from or in connection with any personal injury or property damage claim resulting from any work performed by Seller's employees, agents or subcontractors at Fenner's premises.

**8. WARRANTIES. Seller expressly warrants to Fenner that all Products or goods sold shall:**

- (i) Conform as to quantity, quality and description with the specifications contained in the Contract;
- (ii) Be free of all defects in design, materials and workmanship;
- (iii) Be equal in all respects to the samples, patterns, drawings, or specification provided or given by either party;
- (iv) Be capable to any standard or performance specified in the Contract;
- (v) Comply with all statutory requirements and regulations relating to the Products;

(vi) If the purpose for which they are required is indicated in the Contract or known by Seller, either expressly or by implication, be fit for that purpose.

The warranties under this section will be effective for the longer of: (a) the period provided by applicable law where the Products are used; or (b) the warranty period provided by Fenner to its customers.

(vii) In addition to the remedies available to Fenner through this Contract or applicable law, the Seller is liable to pay for all associated costs incurred by Fenner due to the supply of non-compliant Products. These associated costs are calculated based on: (a) a fixed administrative charge of \$1,000 to cover all handling, data entry and reporting activities resulting from the supply of non-compliant Products; and (b) any additional costs incurred by Fenner in managing the non-compliant Products, including but not limited to, all reworks, investigations and other consequential costs.

Fenner reserves the right to alter the fixed administration charge at anytime without notice to the Seller.

Seller shall repair any defects during the applicable warranty period at Seller's cost and expense (including, without limitation, for all parts, labor and transportation costs) immediately after being notified of any such defect by Fenner. The warranties and remedies contained herein supplement the warranties and remedies provided by the Uniform Commercial Code or other applicable law which shall not be disclaimed or limited. All warranties contained in this Contract shall run, and all remedies shall be available to, Fenner, its affiliates and/or customers, and all such warranties shall survive any delivery, inspection, acceptance or payment by Fenner.

**9. INSPECTION AND TESTING.**

(i) Before delivering the Products, Seller shall carefully inspect and test the Products for compliance with specifications.

(ii) Seller shall also at the request of Fenner supply to Fenner a copy of Seller's test sheets and/or inspection reports for the Products certified by Seller to be a true copy. In such instances, Seller

shall retain the original documents for a period of ten (10) years.

(iii) Fenner shall be entitled to inspect and test the Products during manufacture, processing or storage processes. If this right is exercised, Seller shall provide or procure the provision of all such facilities as may reasonably be required for such inspections and tests. Fenner shall have five (5) years from the date of receipt of Products from Seller to bring any claim for defective or non-conforming goods.

#### **10. REJECTION.**

(i) Fenner may reject or revoke acceptance of the Products if Seller fails to comply with its obligations under the Contract. Fenner reserves the right to inspect, reject and/or revoke acceptance regardless of any prior payment for the Products or the placement of the Products into use for all defects that were not actually discovered by Fenner prior to payment or use.

(ii) Fenner at its sole option may return the rejected or non-conforming Products to Seller at Seller's risk and expense. In such case, Seller shall within a reasonable time replace such rejected Products with conforming Products. Fenner may alternatively require Seller to remove, repair and/or replace the defective Products or parts thereof on site without cost to Fenner.

(iii) Seller shall return to Fenner any amounts paid to Seller for rejected or non-conforming Products that have been returned to Seller but not replaced.

(iv) Where Fenner agrees to accept delivery of the Products by installments, the Contract will be construed as a single contract. Nevertheless failure by Seller to deliver any one installment shall be a material breach of the whole Contract.

(v) The above provisions are in addition to and not in substitution for any other remedies that Fenner may have under applicable law.

#### **11. CARE AND RETURN OF PATTERNS, DIES, ETC.**

(i) All patterns, dies, molds, or any other tooling and any materials supplied by Fenner or prepared for, or obtained by Seller for and at the sole cost of Fenner (collectively, "Tooling"), shall be and remains the property of Fenner. All such Tooling shall be utilized exclusively for Fenner's benefit and under no circumstances will any Tooling be used for the benefit of any third party without the prior written consent of Fenner.

(ii) Seller shall maintain all such Tooling in good order and condition and insure them against all risks while in the custody and on completion of the order or as otherwise directed by Fenner shall return all Tooling to Fenner in good order and condition.

(iii) Seller must have, or put in place systems to ensure that Fenner's Tooling is clearly identifiable and where possible must be physically marked as such.

#### **12. SAFETY AND STATUTORY REQUIREMENTS.**

(i) Seller warrants that the design, construction and quality of the Products to be supplied to Fenner comply in all respects with all safety and other requirements imposed by any statute, statutory rule or order, or other instrument having the force of law which may be in force at the time when the same are supplied. Seller shall comply with all environmental laws and regulations that apply to the Products supplied by Seller to Fenner. Seller agrees to provide Fenner with Material Safety Data Sheets and Certificate of Analysis when applicable.

Seller shall give Fenner prior written notice of: (a) any delivery of the Products or items accompanying the Products having toxic or other hazards to the safety or health of persons or property and shall provide full details of such hazards and of all precautions which should be taken by Fenner in respect of the delivery, storage, handling, installation and use of the Products or items and provide Fenner with all information relating to the properties of the Products or items to enable Fenner to comply with all relevant laws relating to the Products or items and/or such hazards; and (b) any delivery of Products which are perishable or of limited lifespan and of any circumstances which may adversely affect the lifespan of such Products.

**13. INFRINGEMENT OF PATENT, TRADEMARK AND OTHER RIGHTS.** Seller shall fully defend, indemnify, and hold Fenner and the Fenner Indemnitees harmless from and against any and all actions, claims, damages, penalties, interests, judgments, settlements, demands, costs, charges and expenses (including attorney's fees and litigation costs) arising from and incurred by reason of any infringement or alleged infringement of any intellectual property rights by any third party, including patent, design patents, trademarks or copyrights by the use or sale of any Products supplied by Seller.

**14. USE OF INFORMATION.** All designs, drawings, specifications and information supplied by Fenner in connection with any order are confidential and shall be used and protected as Fenner Confidential Information in accordance with Section 15 herein. Accordingly, all such designs, drawings, specifications and information and any copies thereof must be returned to Fenner upon request or upon completion of the order.

**15. CONFIDENTIALITY.** If the parties have entered into a Confidentiality or Non-Disclosure Agreement ("NDA"), the terms and conditions of the NDA shall apply and control for confidentiality obligations between the parties. In the absence of a NDA, Seller may have access to Fenner's confidential information including, without limitation, inventions, developments, know how, specifications, business plans, results of testings, systems, financial information, product information, method of operation, customer information, supplier information and compilations of data ("Confidential Information"). Seller shall use Fenner's Confidential Information only for the purpose contemplated under this Contract and shall not disclose it to third parties or otherwise use it to its own advantage or Fenner's detriment. Confidential Information shall not include information which: (a) is or becomes publicly available without breach of this Contract by Seller; (b) was known to Seller prior to its receipt from Fenner as evidenced in writing; or (c) is developed by Seller independently of its access to Confidential Information. Seller is permitted to disclose Fenner's Confidential Information to its employees and authorize subcontractors on a need to know basis only, provided that such employees or authorized subcontractors have written confidentiality

obligations to Seller no less stringent than the confidentiality obligations under this section. Seller shall remain liable for any breach of this Section 15 by any employees and/or authorized subcontractors with whom it shares such Confidential Information. Seller shall return Fenner's Confidential Information and shall not use Fenner's Confidential Information for its own or any third party's benefit. Seller's confidentiality obligations shall survive termination of the Contract for so long as Fenner's Confidential Information remains confidential. Fenner shall be entitled to injunctive relief including, but not limited to, preliminary, temporary or permanent injunctions, from any court of competent jurisdiction as may be necessary to enjoin any violation of this section without the necessity of proving immediate irreparable harm or any inadequate remedy at law.

**16. ASSIGNMENT, WAIVER, ENTIRE AGREEMENT, SEVERABILITY.** Seller shall not assign or delegate any of its rights or obligations under this Contract without the prior written consent of Fenner. If Fenner consents to Seller's subcontracting of any of Seller's duties under this Contract, Seller will insure that the subcontractor agrees to be bound by all the terms and conditions of the Contract. Fenner may assign the Contract or any part of it to any person, firm or company without notice to Seller. Fenner may terminate this Contract upon written notice to Seller without any further liability to Seller if there is a change of control of Seller, which shall mean any acquisition of substantially all of Seller's assets, or the acquisition of 30% or more ownership in Seller's company by a third party.. The Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations, communications, or agreements by the parties with respect to the subject matter of this Contract. Except as authorized in Section 1, neither the Contract nor any of its provisions may be modified, amended or waived, whether orally, through the parties' course of performance, course of dealing or course of conduct, or manifested in any other way, unless in writing and signed by authorized representatives of both parties. It is the express intention of the parties that such requirement for written modifications, amendments or waivers be strictly enforced notwithstanding judicial precedent or statutory provisions to the contrary. Any provision found

invalid or unenforceable will not affect the validity or enforceability of any other provision and the invalid provision may be judicially modified to the extent enforceable. The failure of Fenner to insist in any one or more instances, upon the performance of the Contract or the failure of Fenner to exercise any of its rights hereunder shall not be construed as a waiver or relinquishment of any such terms, conditions or rights thereunder and shall not effect Fenner's right to insist on strict performance and compliance with regard to any future performance of the Contract.

**17. INDEPENDENT CONTRACTOR STATUS.**

Fenner and Seller are independent contractors. Nothing in this contract makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

**18. DEFAULT, BANKRUPTCY OR LIQUIDATION.**

If Seller commits any breach of the terms and conditions of the Contract, becomes insolvent, is subject to the Bankruptcy courts, enters into an arrangement with its creditors, is put into liquidation or has a receiver appointed, Fenner may, without prejudice to any other rights which may have accrued or which shall accrue to it:

- (i) terminate the order simply by notice in writing to Seller; or
- (ii) give any such receiver or liquidator or other person the option of carrying out the order on such terms as Fenner may specify.

**19. INDEMNITY AND INSURANCE.**

Seller shall fully defend, indemnify, and hold Fenner and the Fenner Indemnitees harmless from and against any and all damage or injury to any person or to any property (including the goods themselves) and against all actions, suits, claims, demands, costs, penalties, interest, settlements, judgments, charges or expenses arising out of the Products supplied by Seller. Seller shall maintain the following kinds of insurance with the minimum limits described below:

- a. Commercial General Liability Insurance with a minimum Limit of Liability of \$1,000,000 for each occurrence, \$1,000,000 Products/Completed Operations Aggregate Limit and \$5,000,000 General Aggregate Limit.
- b. Commercial Automobile Liability Insurance including Owned, Hired and Non-Owned

Vehicles with a minimum limit of \$1,000,000 for each accident.

c. Workers' Compensation Insurance, which provides Statutory Benefits and Employers Liability Insurance with limits of \$500,000 (each accident and each employee by disease).

d. Any other insurance as may be required by law.

Before beginning performance of this Contract, Seller shall furnish insurance certificates as directed by Fenner, satisfactory in form and substance to Fenner, showing the above coverages, and identifying Fenner as a certificate holder.

**20. SET OFF.** Fenner shall be entitled to apply any sum due from Fenner to Seller in settlement of any sum due from Seller to Fenner or to any other company related or affiliated with Fenner.

**21. FORCE MAJEURE.** Neither party shall be liable to the other party for delay in scheduled delivery or failure in performance caused by acts beyond such party's reasonable control without fault or negligence of such party, such as, without limitation, flood, war, embargo, acts of terrorism, riot or the intervention of any governmental authority ("Event of Force Majeure"), provided such party presents a claim and notice in writing to the other party within twenty-four (24) hours of such party becoming aware that an Event of Force Majeure may delay or interrupt performance hereunder. If Seller is unable to perform for any reason, Fenner may purchase Products from other sources and reduce its purchases from Seller accordingly without liability to Seller.

**22. CHOICE OF LAW.** All transactions shall be governed by the laws of the State of Ohio, United States of America, excluding conflict of law rules. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

**23. EQUAL OPPORTUNITY.** Executive Order 11246, as amended, Sec. 402 of the Vietnam Era Veterans Readjustment Act of 1974, as amended, Sec. 503 of the Rehabilitation Act of 1973, as amended, and Sec. 61-250.5(a) and Public Law 95-507 contain required contract clauses relative to equal employment opportunity and are incorporated herein by specific reference at 41 CFR 60-1.4(a,d), 60-4.3, 60-250.5(a) and 60-741.5(a).

**24. DISPUTE RESOLUTION AND FORUM SELECTION.**

Any dispute, controversy or claim arising out of or related to this transaction where the matter in controversy does not exceeds the sum of \$50,000, exclusive of interest and costs, shall be resolved by binding arbitration. A demand for arbitration shall be served on the other by certified mail. Within forty-five (45) days after a party demands arbitration, the parties shall select a single arbitrator. The selected arbitrator shall conduct the arbitration in a manner substantially similar to the procedures set forth in the Commercial Arbitration Rule of the American Arbitration Association ("AAA"). If the parties are unable to agree on an arbitrator, the party demanding arbitration shall file a demand for arbitration with the AAA and the arbitration shall then proceed in accordance with the Commercial Arbitration Rules of the AAA. In all circumstances, the arbitration shall take place in Toledo, Ohio.

Any dispute, controversy or claim arising out of or related to this transaction where the matter in controversy exceeds the sum of \$50,000, exclusive of interest and costs, shall be adjudicated exclusively by a court of competent jurisdiction in Toledo, Ohio. The parties hereto irrevocably consent to personal jurisdiction and venue in a court of competent jurisdiction in Toledo, Ohio and waives any claim or challenge to such jurisdiction or venue.

In the event of any action or proceeding related to this transaction, and Fenner is determined to be the prevailing party with regard to some or all claims, Seller agrees to pay all of Fenner's attorney's fees and litigation costs up through and including any appeal.

**25. EXPORT CONTROL REGULATIONS COMPLIANCE.**

Seller shall comply with all applicable laws and regulations with regard to the supply, sale, transfer, export, re-transfer, or re-export of Products, including economic sanctions; export controls; and, trade embargoes ("Sanctions"). For the avoidance of doubt, all applicable laws and regulations shall include at least those originating out of or related to United Nation’s resolutions, or trade or economic sanctions, laws or regulations of the European Union, of the Organization for Security and Co-

operation in Europe (OSCE), or of the United States of America, including extra territorial sanctions.

Seller shall not cause Fenner to, either directly or indirectly, risk any potential violation of any applicable Sanctions. Furthermore, Seller will not supply, sell, transfer, export, re-transfer, re-export, otherwise make available or use any Products in order to circumvent, evade or avoid any applicable Sanctions.

Where Fenner has reasonable cause to suspect that any Product may be or has been supplied, sold, transferred, exported, re-transferred, re-exported, otherwise made available to any jurisdiction subject to Sanctions, or to a restricted person, or for any use, purpose or activity which is prohibited or otherwise restricted under Sanctions, Fenner reserves the right to: (a) Immediately suspend its performance under the Contract; (b) Request further information or documentary evidence from the Seller, including but not limited to:

- (i) Any licenses, authorizations, permits, or approvals obtained by the Seller with respect to the supply, sale, transfer or export of the Products;
- (ii) Any end user certificates or undertakings supplied to the Seller;
- (iii) Any shipping or commercial documentation, including: invoices; or, bills of lading, in order to verify the end use(s) or end user(s) of the goods.

(c) Take any appropriate measure regarding the continuance of its commercial relationship with the Seller

In addition, Seller shall also respect the Fenner positions, which may go beyond Sanctions as defined above. As of signature date of the Agreement, the list of countries to which Fenner refuses any direct or indirect sales (including transit across these countries) is as follows: Iran, North Korea and Syria. This list is subject to evolutions during the term of the agreement and Fenner reserves the right to regularly notify such changes to the Seller.

Seller shall fully defend, indemnify and hold harmless Fenner, including its directors, officers, employees, agents and representatives from and against any and all losses, costs, claims, causes of action, damages, liabilities, penalties, judgments, settlements, interest, and expense, including attorneys' fees, any expense of litigation or settlement, and court costs, arising from any noncompliance with Sanctions by Seller, and Seller shall compensate Fenner for any losses and expenses resulting thereof. Seller shall be responsible for any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

## 26. ELECTRONIC SIGNATURE

Both parties agree that this particular Contract may be conducted by electronic means and executed by an electronic signature, and such electronic signature will appear on the agreement just as a handwritten signature would for the purpose of establishing the validity, enforceability and admissibility of the contract.

## 27. USE OR RESALE OF PRODUCT

The Products sold by Seller shall comply with all applicable laws. Seller shall provide Fenner with advanced written notice if the Products sold by Seller are banned or prohibited for resale or if any particular use of the Products is prohibited or restricted by applicable law.

**28. ETHICS AND COMPLIANCE.** Seller agrees that (a) in its business dealings with Fenner, it will adhere to the highest standards of ethical conduct, such as set forth in the Michelin Code of Ethics, available at <http://ethique.michelin.com/en>; and (b) be aware of and comply with the laws and regulations that apply to Seller. In the event of inconsistency between any applicable law or regulation and any provision of these Terms and Conditions, the more stringent requirement shall take precedence.

Seller shall apply a "zero tolerance" policy with regard to corruption and influence peddling. In particular, Seller agrees that it will not (1) offer, promise, or give, or (2) attempt to conspire to offer,

promise or give, any unfair advantage, whether monetary or of any other nature, directly or indirectly through an intermediary, to a public official or to any professional relation, for that official or professional relation or for a third party, such that the official, professional relation, or third party acts or refrains from acting in the performance of their duties, with a view to obtaining or retaining an activity or other advantage improperly.

With respect to gifts and invitations, Seller agrees to refrain from any practice aimed at (1) directly or indirectly improperly influencing the judgment of any of Fenner's personnel or (2) obtaining any undue advantage.

In the event that Fenner reasonably believes that Seller has violated this clause, Fenner reserves the right to (a) immediately suspend its performance under the Agreement; (b) request further information or documentary evidence from Seller that in Fenner's good faith judgment is related to the suspected violation; and (c) take any other appropriate and proportionate measure regarding its commercial relationship with Seller.

An Ethics Line is available that can be used by anyone to report any potential breach of any applicable laws and regulations and/or Michelin's Code of Ethics and Anti-Corruption Code of Conduct. An alert can be submitted through the following link:  
<http://michelingroup.ethicspoint.com/>.

**Company:** \_\_\_\_\_

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

**Signature:** \_\_\_\_\_

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

**Date:** \_\_\_\_\_