

**GENERAL CONDITIONS OF SALE**

No. \_\_\_\_\_ / \_\_\_\_\_

**S.C. MICHELIN ROMANIA S.A.**, headquartered in 10 Bucharest Nord Road, Global City, Business Park, Building O1, 3rd floor, Voluntari, Ilfov, registered with the Commercial Registry Office under No. J23/2379/2013, exclusive registration code No. 13663684 account no. IBAN RO74CITI0000000724790038, opened at CITIBANK ROMANIA S.A., telephone 01-202.65.00, facsimile 01-202.66.00, duly represented by the ....., in capacity of Supplier

And

**S.C.** \_\_\_\_\_, headquartered in \_\_\_\_\_, registered with the Commercial Registry Office under No. \_\_\_\_\_, exclusive registration code no. \_\_\_\_\_, account no. IBAN \_\_\_\_\_, opened at \_\_\_\_\_, telephone \_\_\_\_\_, facsimile \_\_\_\_\_, duly represented by \_\_\_\_\_, Mr. \_\_\_\_\_, in capacity of Distributor.

each individually called as the “**Party**” and jointly the “**Parties**”.

The Parties, according to the applicable legislation, commercial practices and customs and considering the terms and the conditions mentioned in the present distribution Contract (hereinafter referred as “**Contract**”), agreed the following:

Whereas:

18. The Parties hereby confirm that this Contract fully reflects the entire will of the Parties;
19. The provisions of the present Contract prevail over any other understandings, documents or negotiations of the Parties before its execution;
20. There are no secondary elements related to the Contract and the Parties’ understanding which have not been reflected in the Contract;
21. The Distributor freely consents to contract, with the intention to be bound under this entire Contract, and executes the Contract with the fully free intention to acquire all rights and obligations herein provided, which it deems to be fair;
22. The Distributor represents that understands and expressly accepts the content of the present Contract.

**1. OBJECT OF THE CONTRACT**

- 1.1. The Supplier shall deliver to the Distributor the products (hereinafter referred as “**Products**) Contract” traded by the Supplier for a price.
- 1.2. The Supplier shall grant the Distributor the non-exclusive right to sell / distribute the Products and the Distributor shall expressly accept to exercise this right under the terms stipulated herein.

**2. PERIOD OF THE CONTRACT**

- 2.1. The Contract shall be concluded for an unlimited period of time following its signature by all Parties to the present Contract.

**3. RIGHTS AND OBLIGATIONS OF THE PARTIES:**

**3.1. RIGHTS AND OBLIGATIONS OF THE SUPPLIER:**

- 3.1.1. To deliver the Products based on the Distributor’s orders that were accepted by the Supplier.
- 3.1.2. To freely establish a reasonable frequency of the deliveries of the Products ordered by the Distributor.
- 3.1.3. To observe the legal provisions regarding the warranty for the delivered Products, the warranty terms being those provided in the Products delivery documents.
- 3.1.4. To provide the Products’ transport to the sale location or to the Distributor’s warehouse specified in the order thereof accepted by the Supplier, the costs resulted following the Products’ transport being incumbent thereupon.

**3.2. RIGHTS AND OBLIGATIONS OF THE DISTRIBUTOR**

- 3.2.1. To purchase the Products from the Supplier, and to distribute them by re-sale, in its own name and on its own behalf;
- 3.2.2. To take over and pay the ordered Products, according to the contractual conditions;
- 3.2.3. To observe the obligations imposed by the legal regulations in force in the country where the Distributor conducts its business;
- 3.2.4. To grant its purchasers at least the same warranties which the Supplier grants for the respective Products;
- 3.2.5. To notify its purchasers the fact that all complaints regarding the sold product shall be sent by them directly to the Distributor and to inform the Supplier about the complaints related to the Products’ quality received from its purchasers;
- 3.2.6. Not to act in the name or on behalf of the Supplier and not to create obligations incumbent thereupon;
- 3.2.7. To inform its purchasers, according to the technical documents made available by the Supplier about the manner of use of the Products or the events that entail the loss of warranty;
- 3.2.8. To promptly notify the Supplier about any risks, of which this becomes aware, related to the Products and that are incompatible with the general security requirements, otherwise being obligated to pay the prejudice thus caused, to pay damages respectively;
- 3.2.9. If applicable and according to the Annexes executed by the Parties with respect to bonus granting, the Distributor undertakes to provide the services of promotion and advertising on the actual market and on the new markets of the Products acquired from the Supplier pursuant to the distribution Contract, in exchange for a bonus;
- 3.2.10. To duly provide, upon request of Supplier, securities/guarantees in order to ensure the fulfillment of all its obligations. If the Distributor shall not fulfill, not fulfill accordingly or shall delay in fulfilling its obligations, the Supplier shall execute the securities/guarantees. If the Distributor shall not fulfill, fulfill in a improper way or fulfill with delay the contractual obligations, the Supplier shall be entitled to execute the securities/bank guarantees.
- 3.2.11. To duly maintain the securities/guarantees required for granting of credit payment facility which are able to cover, at any moment, all deliveries by Supplier for the entire period of credit payment facility and 4 (four) months after Contract termination and to promptly renew it.

#### **4. WARRANTIES**

4.1. The Supplier shall be liable to the Distributor, during the granted period of warranty, for the quality of the sold Products. If the Distributor discovers hidden vices of the sold Products, has the obligation to inform the Supplier within 2 days from the date of the vices disclosure. In case the term for the claim is not respected, the distributor shall not benefit of the warranty effects.

4.2. The Supplier shall not be liable for the shortcomings of the Products caused by Distributor or by the purchasing third persons, the Distributor's customers respectively, failure to observe, of the prescriptions provided in the technical documents.

4.3. If the Distributor decides the extension of the standard warranty granted by the Supplier, the Distributor will sole remain responsible for the extended period.

4.4. The Supplier shall not be liable to the Distributor for loss of data, information, profit or losses incurred in running the business, loss of the use right or for losses of the kind of those mentioned in the foregoing, imputed to the Distributor, or suffered by that during the performance of this Contract.

#### **5. VALUE OF THE CONTRACT**

5.1. Prices per unit related to the Products shall be those contained in the price list in force at the time of sending the order by the Distributor. Prices shall be established in ..... and shall not contain VAT.

5.2. Prices of Products may be changed unilaterally by the Supplier, notifying the Distributor in this respect. The new prices shall be in force from the date of the notification or from the date mentioned in the notification. The price list does not constitute binding offer of sale.

#### **6. MEANS AND TERMS OF PAYMENT**

6.1. Distributor shall make the payment by bank transfer into the bank account registered on the invoice.

6.2. The price shall be paid within \_\_\_\_\_ days \_\_\_\_\_ based on the invoice issued by the Supplier if no other term is mentioned on the protocols.

6.3. All bank charges associated with the bank transfers, related with delivery of the Products, shall be borne by the Distributor except for the bank charges imposed by the bank of the Supplier.

6.4. The barter (in kind) compensation cannot be applicable between the parties, within the legal relationships based on this Contract.

#### **7. BONUS AND DISCOUNTS**

7.1. The Supplier shall grant commercial conditions, discounts and/or bonuses to the Distributor. The general terms for granting the bonus shall be detailed in related Annexes to this Contract (hereinafter referred as "Protocol"). The annual commercial conditions Protocol shall only be signed by the Supplier and the scanned copy of the Protocol shall be communicated to the Distributor. The Protocol of the commercial campaigns shall be communicated to the Distributor via mail, e-mail, B2B portal or personally by Supplier's Sales Force Representative.

7.2. Other types of bonuses granted by the Supplier to the Distributor and method of granting thereof which are not detailed in the Protocols, shall be set forth by the Parties by the execution of Addendum to this Contract.

#### **8. ORDER, DELIVERY AND RECEPTION OF PRODUCTS**

8.1. The Distributor shall place orders to the Supplier, who, following the acceptance thereof, shall deliver the Products. Orders shall contain the number of Products, their sort, technical specifications and exact address for delivery, the sale location/ warehouse of the Distributor.

8.2. Products' manipulation and downloading shall be done by the Distributor. The Distributor is fully responsible for any damages, destructions or other similar actions caused to the Products or to the transportation means, due to the manipulation or downloading of the Products.

8.3. Products' delivery and reception shall be made based on a reception notice that shall be signed by the Distributor's representatives.

8.4. By executing the reception notice without making any reference, it is considered that the Products do not have any obvious vices. Any subsequent claim shall be excluded even if quality or quantity noncompliance between the ordered and delivered Products shall be ascertained, considering the delivery obligation being correct and complete fulfilled.

8.5. The invoice issued by the Supplier shall be attached by the documents provided in this respect by the laws in force.

8.6. It is prohibited that the Distributor changes or deteriorates the Products, in whole or in part, the brands or the numbers that are registered on the Products that represent the object of the Contract, at the time of delivery. It is prohibited for the Distributor to (re) sell the Products thus changed or deteriorated.

8.7. The Products delivered by the Supplier and received by the Distributor cannot be returned to the Supplier or substituted by the latter, for no other reason but only if this is requested based on legal provisions applicable in accordance with the Contract.

8.8. The property right related to the Products shall be transferred from the Supplier to the Distributor exclusively at the time of effective and total payment of the value thereof. The payment of the price shall be considered performed when the respective amount shall be effectively received into the Supplier's account, and not when the respective amount was transferred. The risks of loss or deterioration of the Products that represent the object of this Contract shall be transferred from the Supplier to the Distribution at the time of the delivery thereof.

#### **9. INTELLECTUAL PROPERTY RIGHTS**

9.1. The Distributor expressly acknowledges that he has no rights whatsoever related to the intellectual and/or industrial property rights of the Supplier to the Products except for the right to use the trademarks of the Products only in view of the fulfillment of this Contract. Trademarks shall remain the exclusive property of the Supplier.

9.2. The use right related to the Supplier trademark provided in art. 9.1., shall terminate automatically once the present Contract shall terminate and the right of use related to the Products trademarks shall terminate at the date of stock termination.

9.3. Subject to Supplier's prior written consent on a case by case basis, the Distributor shall have the right to use the Supplier's trademarks also with respect to advertising, publicity and organizing exhibitions.

9.4. The Distributor shall be obligated to pay damages for violation of the Supplier's intellectual property right if such rights are infringed.

#### **10. NON-DISCLOSURE**

10.1. The Distributor undertakes to act in good faith, to have a flawless commercial conduct so that its actions cause no prejudice to the Supplier and to keep the trade secret, with respect to the prices practiced by the Supplier, the terms of sale, inventions, innovations, know-how, commercial strategies or technical documentation, but without limitation thereto.

10.2. The Distributor undertakes not to engage any action which might prejudice in any way the image, the good name or prestige of the Supplier and of the entire

group of companies of which the Supplier is part of. If in breach with the present clause, the Distributor shall pay all damages related to the caused prejudice.

#### **11. ASSIGNMENT OF THE CONTRACT**

11.1. The Distributor shall not assign the rights and obligations or any part thereof incumbent thereupon pursuant to this Contract to a third party, without the prior written consent of the Supplier. The consent shall be communicated to the Distributor, within 15 calendar days at the most as from the date when the consent was requested. Should the Supplier fail to reply within this period of time, it shall be deemed that the Supplier does not agree upon the assignment of the Contract.

#### **12. CONTRACTUAL LIABILITY**

12.1. In case of a failure to observe the payment obligations set forth in this Contract, the Distributor shall be obligated to pay a penalty of 0.1% calculated on the due amount per each day of delay, the amount can exceed the value of the payment obligations.

12.2. For total or partial non-observation or for defective fulfillment of any of the contractual obligations, the Distributor undertakes to pay damages for the caused prejudice.

12.3. In case the Distributor fails to observe the payment obligation and the Products remain unpaid more than 5 calendar days from due date, the Supplier may opt for:

a. to request the Distributor to return in kind the Products on his expenses, considering the owner capacity of the Supplier, and to pay damages including, but not limited to the decreased Product market value and any future prejudice caused to the Supplier due to the non-fulfillment of the payment obligation, or

b. to request the Distributor to observe the fulfillment of the contractual obligation, to pay the price of the delivered Products and the delay fees which can exceed the value of the ordered Products.

12.4. In case of a failure to observe the payment obligation by the Distributor, the Supplier, beside the options mentioned to art. 12.3, may stop the deliveries to the Distributor, until the date of the effective and total payment of the price related to the delivered Products and of the penalties that have been running from due date on, according to the Contract.

12.5. In case the Supplier claims the return in kind of the Products delivered but not paid, the Distributor shall be obligated to bear all costs related to the recovery of the Products, including, but not limited to the transport fares and picking-up of the Products.

#### **13. HARDSHIP CLAUSE**

13.1. The Distributor understands and accepts the possibility that, further to the occurrence of exceptional changes in the circumstances in which this Contract was concluded, beyond the will of the Distributor, the performance of the obligations would become more onerous further to a decrease in the value of the equivalent performance.

13.2. The Distributor agrees to undertake the risk related to the occurrence of such circumstances, being bound to comply with its obligations under the Contract, irrespective of such exceptional changes in the circumstances in which the Contract was concluded.

13.3. By undertaking such risks, the Distributor understands and accepts that it will not be able to request the court to adapt the Contract, in general, further to the occurrence of exceptional circumstances such as the ones provided above.

#### **14. NOTIFICATION METHODS**

14.1. Notifications, invoices and other communications which the Parties are obligated, under this Contract, to send to each other shall be valid subject to their being sent to the addresses referred to in the introduction of this Contract (or to other addresses which the Parties shall have communicated each other in written form), by courier, registered or express mail or mail under acknowledged receipt, by facsimile under acknowledged receipt and by electronically mail, e-mail.

14.2. Notifications sent by facsimile and e-mail, shall be deemed received on the day of sending the facsimile, provided the facsimile is sent until 16.00 of a business day or, otherwise, on the very next working day after the sending. In all the other cases, notifications shall be deemed received commencing from the date of the effective reception thereof by the notified party.

#### **15. DISPUTE RESOLUTIONS**

15.1. This Contract shall be governed by and construed according to the ..... laws in force.

15.2. Disputes that shall arise from this Contract or in relation to this Contract shall be solved amiably, if not, it shall be deferred for solution to the competent Law Courts of the Supplier's headquarters.

#### **16. PARTIAL NULLITY**

16.1. In the case when one clause or a part of this Contract is declared illegal, null or unenforceable, this illegality, nullity or unenforceability, shall not affect the legality, validity or enforceability of the other contractual clauses. The Parties shall negotiate in good faith in order to replace the invalid provisions by valid ones in complying with the commercial or business purpose of the illegal, null or unenforceable provision.

16.2. The clause regarding the property transfer and the obligation to pay the Contract price, including that regarding the payment methods, shall be deemed material.

#### **17. CONTRACT TERMINATION AND CANCELLATION**

17.1. This Contract shall terminate in the following terms:

a. by both Parties' Contract, concluded in an addendum signed by both parties;

b. each party is entitled to terminate the present Contract through a notification sent to the other Party if the other Party fails to observe the fulfillment of its contractual obligations, conditions or guarantees. The Contract shall be terminated from the date the notification is received by the default Party.

c. The Supplier shall unilateral terminate the Contract under a 30-day calendar notice as from the date when the other party receives the notification of the denouncement;

17.2. The cancellation of the Contract shall not prevent a Party to claim damages for the repair of the prejudice suffered following the other party's failure to fulfill its obligations.

17.3. In case of termination, the Products that have already been delivered or those that have already been ordered before cancellation and for which the delivery shall be performed, cannot be refused or returned by the Distributor, this one being obligated to pay for such Products.

#### **18. PERSONAL DATA**

18.1 Distributor hereby declares, by signing this document, that expresses its consent to Supplier (hereinafter referred to as „the Collector”) with processing of all personal data expresses its consent in order to allow the enter into Supplier’s database of any personal data, as well as any other information given by Distributor, that are contained in this document, to be processed and used for the fulfillment of the Contract, so for economic, financial and administrative purposes in relation to the General Conditions of Sale.

18.2 Personal data can be transferred by Supplier being as data processor to any member company of Michelin Group or any other individual or legal entities retained by Michelin Group for the purposes of data processing within E.U. territory, are not made public and are not revealed to third parties, with the exception of the cases admitted by law.

18.3 Distributor aware that according to Law no. 677/2001, by writing a dated and signed request that is sent at the Supplier’s address mentioned above, to the attention of the “Marketing Department”, Distributor’s employees can freely exercise the following rights: the right to access, once per year, personal data’s processing; the intervention right, the right to be subject of an individual decision, the right to erase personal data and to demand the cessation of their processing; the right to not be subjected to an individual decision; Also, right to appear in front of a court is being recognized.

## 19. MILITARY EMBARGO

19.1 Client shall comply with all applicable laws and regulations with regard to the supply, sale, transfer, export, re-transfer, or re-export of the Products, including: economic sanctions; export controls; and, trade embargoes (“Sanctions”).

19.2. Client shall not cause Michelin to, either directly or indirectly, risk any potential violation of any applicable Sanctions. Furthermore, Client will not supply, sell, transfer, export, re-transfer, re-export, otherwise make available or use any Product supplied by Michelin in order to circumvent, evade or avoid any applicable Sanctions.

19.3. Client shall only supply, sell, transfer, export, re-transfer, re-export, otherwise make available or use Products as permitted by applicable law and shall not supply, sell, transfer, export, re-transfer, re-export, or otherwise make available, either directly or indirectly, any Products.

19.4. To any party resident, located, registered, incorporated, domiciled or head-quartered in any jurisdiction subject to Sanctions;

19.5. To any individual, entity or body either: (i) specifically designated or listed under Sanctions; (ii) owned or controlled by any person specifically designated or listed under Sanctions; or, (iii) acting for or on behalf of any person specifically designated or listed under sanctions (“Restricted Persons”); and

19.6. For any use, purpose or activity which is prohibited or otherwise restricted under Sanctions, without Michelin’s prior written approval.

19.7. Where Michelin 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, Michelin reserves the right to:

- a. Immediately suspend its performance under the Agreement;
- b. Request further information or documentary evidence from the Distributor, including but not limited to:
  - i. Any licences, authorisations, permits, or approvals obtained by the Distributor with respect to the supply, sale, transfer or export of the Products;
  - ii. Any End User Certificates or Undertakings supplied to the Distributor;
  - 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 Products.
- c. Refuse any future sale, supply, transfer or export of the Products to the Distributor.

19.8. Client shall immediately notify Michelin if Client, or any of the Client’s Group Companies, or any of their respective directors or officers is a Restricted Person. Furthermore, Client shall immediately inform Michelin if Client is aware or has reasonable cause to suspect that either the Client, or any of the Client’s Group Companies, or any of their respective directors or officers may become a Restricted Person.

19.9. In the event that any Product supplied by Michelin is re-supplied, re-sold, re-transferred, re-exported, re-distributed or otherwise made available to any third party, Client shall take all actions reasonably necessary to ensure that such third parties: (a) Comply with any applicable Sanctions; and, (b) Do not cause Michelin to violate any applicable Sanctions.

19.10. Client shall indemnify and hold harmless Michelin from and against any losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys’ fees, any expense of litigation or settlement, and court costs, arising from any noncompliance with Sanctions by Client, and Client shall compensate Michelin for any losses and expenses resulting thereof. Client shall be responsible for any act or omission of Client, its officers, employees, affiliates, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

## 20. FINAL PROVISIONS

20.1. The force majeure removes the liability of the Parties, in case of a partial or total failure to fulfill the obligations undertaken under this Contract and the Distributor expressly undertakes and accepts that the unforeseeable circumstances, as defined in the civil code, do not waive his liability.

20.2. The parties hereby confirm that this Contract fully reflects the entire will of the parties on the object hereof, it prevails over any other understandings, documents or negotiations of the parties before the execution hereof and that there are no secondary elements related to the Contract and the parties’ understanding which have not been reflected in the Contract.

20.3. The Distributor freely consents to contract, with the intention to be bound under this entire Contract, and executes the Contract with the fully free intention to acquire all rights and obligations herein provided, which it deems to be fair.

20.4. The Distributor represents that it understands and expressly accepts the content hereof, including, but not limited to the clauses on:

- a) the limitation of the right to invoke the hardship clause;
- b) the forfeiture of rights or of the benefit of the term;
- c) the possibility to transfer by assignment the Contract or related rights, without the Supplier's consent;
- d) the applicable law.

20.5. The Supplier informed the Distributor that, in addition to the contractual rights and obligations, each of the Contracting Parties has rights and obligations under the law, Distributor representing that it is aware of these legal rights and obligations.

20.6. For any question not regulated in this Contract, the relevant provisions of the Civil Code are governing.

20.7. Contract shall be duly signed in original by Supplier and send as scan to the Distributor. The Distributor will sign in original the Contract in 2 copies and will send one copy to the Supplier to the address mentioned in the introduction part of the Contract. By signing the Contract, the Distributor declares and guarantees that accepts the scanned copy of the Contract and considers it as original producing legal effects between Parties.

This Contract was entered in in 2 (two) counterparts, one for each Party, both drafted in ..... language and English language. .... version shall prevail in case of discrepancies between the two versions.

**FURNIZOR/SUPPLIER,**

Martin Thiollier

Director Comercial / Commercial Director  
Michelin Romania SA

**DISTRIBUTOR/DISTRIBUTOR,**