

Tire Agreement Instructions

The tire agreements are the result of non-competitive negotiations and are optional use agreements. This agreement is only valid for "over the counter" sales of tires and some related dealer services.

Orders will only be placed with participating dealers identified by the Contractor. All payments will be made directly to the selling dealer via the buyer's purchase card; however, only localities may make payment via their purchase card or any other means which is mutually agreeable between the locality and selling dealer.

Single purchases are limited to the single quote threshold of \$5000. The tires are to be paid for by the use of the purchase card at the point of sale, or as directed above for localities. These purchases are not to be placed through eVA.

Occasionally, there may be very large tires on the price lists which are in excess of \$5000 per tire. These tires are to be purchased using normal competitive procedures.

Procedure to purchase a tire pursuant to these tire agreements:

- a. Identify the tire you need to purchase.
- b. Review the manufacturers' pricelists to determine which tire you are going to buy.
- c. Find a dealer using the dealer listing for the appropriate manufacturer.
- d. Buy the tire as an "over the counter" sale using your purchase card (or as directed above for localities).

Delivery to your location is not part of this Purchase Agreement. If the dealer does not have the tire you want in stock, you may have the dealer order it or move on to another dealer.

If you are buying Michelin tires, the dealers are listed as either "retail" or "commercial". Commercial dealers are those dealers which focus their sales on larger tires such as truck tires. Retail dealers are those dealers which focus their sales on smaller vehicles such as passenger cars.

The contact points for each manufacturer are as follows.

Bridgestone/Firestone
Linda Alberstad
800 543-7522 Ext 3693
AlberstadtLinda@bfusa.com
Bridgestone & Firestone Tires

Continental General
~~Lesla Small~~
~~704 583-8837~~
~~Lesla.Small@conti-na.com~~
~~Continental & General Tires~~

Goodyear
Jeanne Oberdier
888 453-0021 Option 2, 2
jeanne.oberdier@goodyear.com
Goodyear Tires

Michelin
Kaye Pittman
864 458-6030
Kaye.Pittman@us.michelin.com
Michelin, BF Goodrich &
Uniroyal Tires

COMMONWEALTH OF VIRGINIA
VOLUME DISCOUNT SALES AGREEMENT

Agreement No: 86300-01-10PA

This agreement entered into September 1, 2009 by MICHELIN NORTH AMERICA, INC., hereinafter "Contractor", and the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply, called the "Purchasing Agency".

Witnesseth that the Contractor and the Purchasing Agency, in consideration of mutual covenants, promises and agreements herein contained, agree as follows:

Scope of Agreement: The Contractor shall provide tires to the Agencies of the Commonwealth of Virginia, or other public bodies as set forth in the Purchase Agreement documents.

PERIOD OF PERFORMANCE: From: September 1, 2009
Through: August 31, 2010

The agreement documents shall consist of:

- (1) This signed form;
- (2) The attached terms and conditions; and
- (3) Attached MICHELIN NORTH AMERICA, INC. Price Lists

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound.

CONTRACTOR:
By: *Roger Hansen*
Print Name: ROGER HANSEN
Title: Director, Government Sales
Company Name: Michelin North America, Inc
Date: September 18, 2009

PURCHASING AGENCY: (on behalf of
By: *Cynthia W. Wilson* ^{Matt Marion)}
Print Name: Cynthia W. Wilson
Title: Statewide Contract Officer
COVA Division: DGS/Div of Purchases & Supply
Date: September 21, 2009

I. PURCHASING AGREEMENT

Program Outline: The Purchasing Agreement, hereinafter referred to as "PA", is established on non-competitive voluntary basis with MICHELIN NORTH AMERICA, INC. The purpose of the PA is to ensure that all agencies and public bodies of the Commonwealth are afforded the opportunity to avail themselves of a uniform Vendor discount when purchasing small dollar goods less than \$5,000 per transaction from MICHELIN NORTH AMERICA, INC. This is a non-mandatory program and purchasing agencies are under no obligation to purchase from this agreement.

II. GENERAL TERMS AND CONDITIONS

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this Purchase Agreement in their entirety. The procedure for filing Purchase Agreement claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting Purchase Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the Contractor are encouraged to resolve any issues in controversy arising from the Purchase Agreement or any dispute using Alternative Dispute Resolution ADR procedures *Code of Virginia*, § 2.2-4366. ADR procedures are described in Chapter 9 of the *Vendors Manual*. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their signed Purchase Agreement, Contractor certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Purchase Agreement Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act VPPA*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Purchase Agreement on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Purchase Agreement with public bodies to account for the use of the funds provided; however, if the faith-based

organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. *Code of Virginia*, § 2.2-4343.1E.

In every Purchase Agreement over \$10,000, the provisions in one and two below apply:

1. During the performance of this Purchase Agreement, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The Contractor will include the provisions of 1. above in every Subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Subcontractor or vendor.
- D. **ETHICS IN PUBLIC PURCHASING:** By submitting their signed, Purchase Agreement, the Contractor certifies that the Agreement was made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Contractor, supplier, manufacturer or Subcontractor in connection with their Purchase Agreement, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986**: By entering into a written Purchase Agreement with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the Purchase Agreement for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS**: By submitting their signed Purchase Agreement, the Contractor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on solicitations for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **PRECEDENCE OF TERMS**: The following General Terms and Conditions *VENDORS MANUAL, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC PURCHASING, IMMIGRATION REFORM AND CONTROL ACT OF 1986* and **DEBARMENT STATUS**, shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- H. **ASSIGNMENT OF PURCHASE AGREEMENT**: A Purchase Agreement shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.
- I. **CHANGES TO THE PURCHASE AGREEMENT**: Changes can be made to the Purchase Agreement in any of the following ways:
1. The parties may agree in writing to modify the scope of the Purchase Agreement. An increase or decrease in the price of the Purchase Agreement resulting from such modification shall be mutually agreed to by the parties as a part of their written agreement to modify the scope of the Purchase Agreement.
 2. The Purchasing Agency may order changes within the general scope of the Purchase Agreement at any time by written notice to the Contractor. Changes within the scope of the Purchase Agreement include, but are not limited to, things such as services to be performed, the method of packing or shipment and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

- a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the Purchase Agreement, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the Contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the Purchase Agreement. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty 30 days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the Purchase Agreement price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this Purchase Agreement or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this Purchase Agreement shall excuse the Contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the Purchase Agreement generally.
- J. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this Purchase Agreement shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- K. **DRUG-FREE WORKPLACE:** During the performance of this Purchase Agreement, the Contractor agrees to i provide a drug-free workplace for the Contractor's employees; ii post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the

unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; iii state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and iv include the provisions of the foregoing clauses in every Subpurchase Agreement or purchase order of over \$10,000, so that the provisions will be binding upon each Subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Purchase Agreement awarded to a Contractor, the employees of who are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Purchase Agreement.

III. SPECIAL TERMS AND CONDITIONS

Authorized Users: Unless otherwise instructed by the Division of Purchases and Supply, all departments, institutions, agencies and other public bodies of the Commonwealth of Virginia, to include cities, counties, towns and political subdivisions, may order tires under this agreement.

Excise Tax: Excise tax exemption registration No. 54-73-0076K may be used when required.

Inspection/Approval: Inspection on delivery and approval of Contractor's invoice is the responsibility of receiving state agency or public body.

Orders: This agreement is only valid for "over the counter" sales of tires and services as offered by the Contractor. Orders will only be placed with participating dealers identified by the Contractor. All payments will be made directly to the selling dealer via the buyer's purchase card. Localities only may make payment via their purchase card or any other means, which is mutually agreeable between the locality and selling dealer.

Minimum Orders: There is no minimum order under this agreement. All tires ordered under the agreement shall be priced as FOB destination.

Delivery: Delivery is to be made from the dealer's inventory. If a tire is not in stock at the dealer the purchasing agency at their discretion request that the selling dealer order the tires for pickup at a mutually agreeable future date.

Prices: All prices provided by the Contractor shall be FOB selling dealer.

Posting of Prices and Dealer Information: The Contractor gives permission for the Division of Purchases and Supply to post this agreement, pricing data, dealership information and any other information necessary to facilitate the use of this agreement by the authorized users of this agreement on the Division's web site.

Price Escalation/De-escalation: Due to uncertain market conditions, the Commonwealth and the Contractor may negotiate mutually agreeable price changes to this agreement.

Cancellation: This agreement may be cancelled by either party with thirty 30 days written notice to the other party.

Volume Reports: The Contractor shall provide quarterly sales volume reports. The report will contain the following data. Product Number, Tire Description, Number of Tires Sold by Product Number, Total Cost of Tires Sold by Product Number, and whether the tires were sold to the Commonwealth or one of its Political Subdivisions.

END OF VOLUME DISCOUNT SALES AGREEMENT