

TERMS AND CONDITIONS OF SALES

1. Definitions

“*Accounting Currency*” means the currency in which the Seller has paid or shall pay the Manufacturer or Concessionaire of the Goods

“*Agreed Price*” means the price negotiated and agreed between the Purchaser and the Seller for the purchase of the Goods

“*Conditions*” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Purchaser and the Seller;

“*Data Protection Act*” shall mean the Data Protection Act of Kenya, No. 24 of 2019 and any subsequent amendments thereto;

“*Delivery Date*” shall mean the date and time agreed between the Purchaser and the Seller for the delivery of the Goods to the Purchaser;

“*Deposit*” means such sum of the Agreed Price of the Goods as shall be required to be paid to the Seller in advance in accordance with the provisions of Clause 6 of these Conditions;

“*Goods*” shall mean the item intended to be purchased by the Purchaser and as specified in the Customer Order Form;

“*Invoice*” shall mean the Seller’s invoice in relation to the Goods intended to be purchased, indicating the specification of the Goods, quantities thereof and Agreed Prices;

“*Order*” means the communication of intent by the Purchaser to purchase the Goods the same of which shall be by way of the Purchaser’s written communication of acceptance of the Seller’s Quotation;

“*Payment Currency*” means the currency in which the price for the Goods is payable by the Purchaser to the Seller;

“*Personal Data*” as used herein will have the meaning assigned to it under the Data Protection Act;

“*Purchaser*” shall mean the person who buys the Goods from the Seller;

“*Quoted Price*” means the price for the Goods quoted by the Seller on the Seller’s Proforma Invoice;

“*Registration*” means registration of a Good by law requiring registration, with the relevant government registry;

“*Seller*” means Simba Corporation Limited and/or any of its holdings, subsidiaries and associated companies which accepts the Purchaser’s Order for the Goods;

2. Entire Agreement

- a) These Conditions and other matters appearing on face of this document shall apply to the purchase of the Goods from the Seller to the exclusion of all other terms and conditions, including any terms or conditions which are implied by trade, custom, practice or course of dealing or which the Purchaser may purport to apply or rely on. However, the terms and conditions in any subsequently separately negotiated and signed written contract entered into by the parties in respect of the Goods shall prevail over any inconsistent provisions of these Conditions. These Conditions are subject to change without notice by the Seller
- b) All Orders for Goods shall be deemed to be an offer by the Purchaser to purchase the Goods pursuant to these Conditions. By placement of an Order, the Purchaser confirms having read and understood these Conditions and agrees to be bound by them.

3. Acceptance of Order

- a) Any Order placed by the Purchaser in respect of the Goods is subject to acceptance by the Seller. The Order shall be deemed to be accepted by Seller on the earlier of:
 - i. the Seller’s written acceptance of the Order; or
 - ii. the Seller doing any act consistent with fulfilling the terms of the Order;

4. Parties Obligations

- a) The Purchaser shall:

- i. Provide all information, documents, data and details required by the Seller in order to facilitate the sale
- ii. Make payments in the manner stipulated under Clause 5 of these Conditions
- iii. Issue the necessary affirmations, confirmations and approvals required by the Seller from time to time in the manner required and within any set timelines necessary for the completion of the sale.
- iv. Comply with the instructions issued by the Seller in regards to the delivery and collection of the Goods
- v. Ensure it complies with the Seller's Ethics and Integrity Policy at all times; and by execution of this document, confirms having received from the Seller a copy of the Seller's Ethics and Integrity Policy. The Purchaser in any event undertakes not to act, or omit to act, in such a way as to give rise to a breach by it, its agents or any of its affiliates, of any applicable law related to bribery, corruption or any related matter.
- vi. The sale transaction shall be personal to the Purchaser and the Purchaser may not assign his rights or liabilities under the transaction to any third party by any means

- b) The Seller shall:
 - i. Process the Purchaser's Order and deliver the Goods in the manner agreed upon between the Seller and the Purchaser and endeavor to meet the estimated Delivery Dates
 - ii. comply with any and all applicable laws and regulations applicable to performance of its obligations under this Agreement
 - iii. Perform its obligations under this Agreement timeously and with due diligence and

5. Payment of the price

- a) The price for the Goods shall be paid in the manner indicated on the face of the Invoice
- b) Notwithstanding the Agreed Price, the total sum payable for the Goods shall be such sum as the Seller has legally had to pay or becomes legally bound to pay for the Goods including any increases in taxes, duty or other governmental levies or any costs imposed by third parties over whom the Seller has no control.
- c) If, on the date of final clearance of the Goods through customs, the rate of exchange between the Payment Currency and the Accounting Currency shall have appreciated with reference to the date of Order for the Goods, the Agreed Price for the Goods shall be adjusted accordingly by an amount equivalent to the percentage appreciation of such rate
- d) The Purchaser shall be responsible for obtaining any necessary clearances and exemptions for purchase of the Goods free of Duty or any other taxes
- e) In the event of any delays against the payment dates, the Seller shall have the discretion to charge a late payment interest on all outstanding amounts at 2% above the prevailing Standard Chartered bank interest rate from the date of default till payment in full
- f) The Purchaser understands and hereby consents that the Seller may:
 - i. Carry out credit checks or obtain the Purchaser's credit information from a Credit Reference Bureau;
 - ii. in the event of default of the Purchaser's payment obligations, be at liberty to refer the Purchaser's details to the Credit Reference Bureau for listing. The Seller shall be at liberty to disclose to the Bureau details relating to the Purchaser's account including details of the Purchaser's default of its payment obligations.
- g) Property in the Goods shall be transferred to the Purchaser upon:
 - i. payment in full of the purchase price; or
 - ii. registration of Goods in the name of the Purchaser where the Goods are of such nature as to require registration; or
 - iii. delivery of the Goods to the Purchaser where the Goods are procured on the basis of the Purchaser's Local Purchase Order, or procured through credit terms agreed between the Purchaser and the Seller.

6. Deposits

- a) Payment of Deposit
 - i. The Seller may at its own discretion demand payment of a Deposit of such part of the Agreed Price as shall be indicated in the Purchaser's Invoice.
 - ii. The Deposit shall be paid in the manner set out on the face of the Seller's Proforma Invoice, Invoice, Customer Order Form. It is hereby understood that the Seller shall not be obligated to progress the Order or otherwise process the transaction unless and until the Deposit is paid in full.

iii. Under no circumstances whatsoever shall the Seller be under any obligations to pay any interest on the Deposit.

b) Return of Deposit

In the event

- i. the sale is cancelled under the provisions of clauses 6(b), 7(d) and 7(e), the Deposits shall be returned to the Purchaser provided always that the Purchaser shall be entitled to recover from the Deposit any costs incurred in the process of procuring the Goods and the Seller shall be under no further liability to the Purchaser
- ii. the Purchaser fails to pay the balance within the prescribed time or for any reason other than as provided under Clauses 7(e), 9(c), and 9(d) the Purchaser cancels the Order, the Deposit shall be forfeited
- iii. in the event the Seller in its discretion agrees to refund the Deposit in circumstances other than those specified in clauses 7(e), 9(c), and 9(d) the Seller shall be entitled to deduct from such Deposit the amount sufficient to compensate the Seller for costs or expenses incurred or suffered by the Seller as a result of the failure by the Purchaser to complete the purchase of the Goods in accordance with these Conditions. In no event however shall a refund of such Deposit be made before the Goods have been sold by the Seller to another Purchaser. The Purchaser shall also be entitled to deduct from the Deposit any costs or expenses incurred in reselling the Goods plus any reduction in the sale price achieved.

7. Delivery

- a) Unless otherwise agreed in writing, delivery shall take place at the Seller's premises.
- b) Unless specifically agreed in writing, it is understood that time for delivery shall not be of the essence.
- c) The Seller will endeavor to secure delivery of the Goods by the Delivery Date. It is understood the Delivery Date is an estimated Delivery Date and the Seller shall not be liable for any damages whatsoever or claims of any kind in respect of delay in delivery.
- d) The Seller shall not be obliged to fulfil Orders in the sequence in which they are placed. The Delivery Date shall also be subject to the Purchaser meeting its pre-delivery obligations as agreed with the Seller
- e) Save for delays caused by circumstances beyond the reasonable control of the Seller, if the Seller shall fail to deliver the Goods within Thirty (30) days of the Delivery Date, the Purchaser may by notice in writing require delivery of the Goods within Twenty One (21) days of receipt of such notice and if the Goods shall not be delivered to the Purchaser within the said Twenty One (21) days, the sale may at the option of the Purchaser be cancelled; Such cancellation must be communicated in writing to the Seller within Seven (7) days of the expiry of the Twenty-One day notice period
- f) The period of Fifty-One days referred to in sub-clause (e) of this clause shall not apply in the following circumstances:
 - i. Where the Goods are sold duty-free and the Purchaser requires to obtain exemption from payment of duty and other taxes
 - ii. Where the Purchaser wishes to have the Goods registered with a special registration number
 - iii. Where for reasons beyond the control of the Seller, such time period cannot be achieved
- g) Upon delivery of the Goods, the Purchaser shall inspect the Goods and shall satisfy itself of the merchantability of the Goods. Save as may be provided under the Warranty provisions under Clause 10 of these Conditions, the Seller shall not be liable for any apparent defects the same of which could reasonably have been discovered through delivery inspection.
- h) In the event the Purchaser shall fail to take delivery of the Goods within seven (7) days of notification that the Goods have been completed for delivery the Seller may charge for storage of the Goods at such reasonable rates as the Seller may determine from the date of default till such date as the Purchaser shall take delivery of the Goods

8. Transfer of Risk and Retention of Title

- a) Risk to the Goods shall be passed on to the Purchaser immediately upon delivery to the Purchaser or its nominated representative
- b) Property in the Goods shall pass to the Purchaser in the manner set out under Clause 5(f) of these Conditions.
- c) The Purchaser hereby grants to the Seller, a general lien upon, and right of set-off against, all monies, securities, instruments and other property or rights of the Purchaser now or hereafter in the possession of or under the control of or on deposit with the Seller or any office, agency or affiliate of

the Seller whether held in a general or special account, or for repair, servicing, safekeeping, custody or otherwise; and every such lien and right of set-off may be exercised without demand upon, or notice to the Purchaser until the obligations of the Purchaser hereunder are paid in full.

9. Manufacturer's Terms and Conditions

If the Goods to be supplied by the Seller are new and sourced from a Manufacturer or its concessionaire, the following provisions shall have effect:

- a) These Conditions and the delivery of the Goods shall be subject to any terms and conditions which the Manufacturer or the Manufacturer's concessionaire may from time to time lawfully attach to the supply of the Goods or the re-sale of such Goods by the Seller, and the Seller shall not be liable for any failure to deliver the Goods occasioned by the Seller's inability to obtain them from the Manufacturer or concessionaire or by the Seller's compliance with such terms and conditions
- b) The Quoted Price is subject to change as a result of any increase in the price payable to Manufacturer or concessionaire for the Goods
- c) If after the date of the Order and before the delivery of the Goods to the Purchaser the Quoted Price should increase by more than more than 10% exclusive of any duties, taxes, levies or imposts thereon, the Seller shall notify the Purchaser and the Purchaser shall have the right to cancel the purchase within fourteen (14) days of receipt of such notice
- d) In the event of the Manufacturer ceasing to make Goods of that type the Seller may (whether the estimated Delivery Date has arrived or not) by notice in writing to the Purchaser cancel the sale.

10. Data Protection

- a) Each Party warrants that it has taken all appropriate and reasonable technical and organisational measures to prevent the loss of, damage to or unauthorised destruction of Personal Data and the unlawful access to or Processing of Personal Data
- b) The Seller may from time to time request for the Purchaser's Personal Data and by accepting these terms and conditions, the Purchaser consents to provide such Personal Data to the Seller to be used as provided hereunder and as required under the laws of the Republic of Kenya.
- c) The Purchaser acknowledges that the Seller may from time to time transfer such Personal Data to its international partners for the purpose of fulfilling its obligations under this Agreement. The Purchaser hereby consents to such transfer of its Personal Data provided that the Seller shall only make such transfers in compliance with the requirements of international transfer of Personal Data under the Data Protection Act.

11. Representations and Warranties

- a) The Seller issues no representations or warranties as to the quality of Goods or their fitness for any purpose whether express or implied by law or custom, save as may be provided under the Manufacturer's warranty (incorporated herein by reference and which warranties are subject to the exclusions and/or limitations set out therein). The Seller undertakes that it will ensure that the pre-delivery work specified by the Manufacturer or concessionaire is performed and that it will use its best endeavors to obtain for the Purchaser from the Manufacturer or Concessionaire the benefit of any warranty given by him to the Seller or to the Purchaser in respect of the Goods
- b) The Seller warrants that the Goods shall be sold free of any liens, encumbrances, charges or other claims by third parties against the title.

12. Notices

Any notice, demand, request, advise or other communication under this Agreement (each, a "Notice") shall be: (i) in writing; (ii) in English; and (iii) delivered by hand, email or Short Message Service ("SMS") or pre-paid recorded delivery to the addresses provided overleaf or such other address as are specified by the Parties (or registered airmail in the case of an address outside of Kenya).

Deemed Delivery

A Notice shall be deemed to have been received: (i) at the time of delivery if delivered by hand, email or SMS; (ii) in the case of pre-paid recorded delivery, 48 hours from the date of posting; and (iii) in the case of registered airmail, five days from the date of posting provided that if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day..

13. Limitation of Liability

In no event shall the Seller be responsible for any damages arising from loss of business, loss of profit, loss of use, loss of market, loss of goodwill or any other consequential damages or loss whatsoever arising out of the Seller's breach of its obligations under this agreement notwithstanding that fact the Seller has been advised of the possibility of such loss or damage.

14. Force Majeure

Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any Force Majeure event including but not limited to: acts of God, fire, explosion or other catastrophes, epidemic, pandemics, quarantine restrictions, perils of the sea, war declared or not or threat of the same, civil commotion, blockade, arrest or restraint of government, rulers or people, strike, lockout, sabotage or other labour dispute, accident, breakdown or unavailability of whole or part of machinery, plant, transportation or loading facility, governmental request, guidance, order or regulation or sanctions, severe shortage of oil, gas, electricity or materials, bankruptcy or insolvency or re-organisation of the manufacturer or supplier of the Products, or any other cause or causes or circumstances whatsoever beyond the reasonable control of either Party. It is hereby understood that under no circumstances is the Purchaser relieved by any of the above-cited events or occurrences from its obligations to make any payments due to the Seller under the agreement.

If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extent thereof.

If the Force Majeure in question prevails for a continuous period in excess of three (3) months, the Parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable. Notwithstanding the foregoing, the Seller reserves its right to terminate the Agreement forthwith at any time should the Force Majeure event prevail for a period of more than three (3) months.

15. Anti-Corruption

- a) The Parties warrant that they have established and maintained an anti-corruption compliance program which includes policies, procedures and controls designed are adequate to ensure compliance with all anti-corruption and anti-bribery laws and to detect violations of any applicable anti-corruption and anti-bribery law as the same may be enacted or amended from time to time ("Anti-Corruption Law").
- b) The Parties warrant that they have complied with and have caused their officers, directors, employees and agents to comply fully with all applicable laws, regulations and official requirements related to anti-bribery or anti-corruption.
- c) The Parties warrant that they shall promptly report to the other any actual, alleged or attempted violation of any applicable Anti-Corruption Law arising in connection with the services and shall cooperate with each other in investigating and responding to such actual, alleged or attempted violation.
- d) The Seller may terminate this Agreement forthwith if it has reasonable grounds to suspect that the Purchaser has violated any Anti-Corruption Law

e) Governing Law & Dispute Resolution

These Conditions shall be governed by and construed in accordance with the laws of the Republic of Kenya. In the event of any disputes arising between the Parties hereto, such dispute (where the same has not been resolved by mutual agreement of the Parties within sixty (60) days of a declaration of dispute) shall be determined by a court of competent jurisdiction within the said Republic

f) Waiver

Failure by either Party to exercise any rights under these Conditions in any one or more instances will not constitute a waiver of such rights in any other instance. Waiver by such Party of any default under these Conditions will not be deemed a waiver of any other default.

g) Assignment

The terms of these Conditions are binding on the successors and assigns of the Parties. The Purchaser shall not assign or transfer its benefits or obligations under these Conditions or any interest therein without the prior written consent of the Seller. The Seller may assign or transfer its benefits or obligations under these

Conditions and may delegate its performance hereunder to any of its Group Company/Companies upon reasonable prior notification to the Purchaser.

h) Independence of Provisions

If any provision of these Conditions shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the other provisions of these Conditions shall not be affected and the legality, validity and enforceability of the whole of these Conditions in any other jurisdiction shall not be affected. The Parties shall substitute and negotiate in good faith, if necessary, new provisions under reasonable terms and conditions and in compliance with the intentions of the Parties as contained herein.

Part II

TERMS AND CONDITIONS OF SALE FOR SPECIAL MODELS

1. Except otherwise herebelow provided, the terms and conditions specified in Part I shall apply to this Part II.
2. In this Part II the expressions "Special Models" shall mean the Goods (and accessories) of a type the Seller cannot otherwise resell or dispose of without incurring significant losses such as Goods ordered which are not part of the Seller's normal range of products or Goods specifically procured for the Purchaser in accordance with the Purchaser's instructions.
3. Words and expressions defined in clause 1 of Part I shall unless the context shall otherwise require have the same meaning in this Part II
4. An Order for a Special Model will be accompanied by a Deposit of such amount as shall be acceptable to the Seller ("Special Model Deposit"). The Seller may in addition to or in lieu of the Special Model Deposit accept in its discretion, any other security arrangements offered by the Purchaser.
5. The Purchaser shall upon demand, compensate the Seller for any exchange losses incurred by the Seller on the balance (if any) between the Quoted Price and Special Model Deposit.
6. If the Purchaser shall fail to take delivery of the Special Model within 14 days of notification that the Special Model was ready for delivery (the "Completion Date") or if the Purchaser shall cancel the sale other than pursuant to Clause 7(e), 9(c), or 9(d) of Part I, the Seller, shall be at liberty to treat the sale as cancelled and thereupon the Special Model Deposit shall be forfeited entirely to the Seller. For the avoidance of doubt, no portion of the Special Model Deposit shall be refundable to the Purchaser where cancellation is made for reasons other than those stipulated under 7(e), 9(c), and 9(d) of Part I
7. In the event of any cancellations other than as provided under 7(e), 9(c), and 9(d) of Part I, the Seller may resell the Model by auction or private treaty. Upon cancellation, the Purchaser shall be liable to pay to the Seller liquidated damages in the sum of:
 - a) the price difference between the re-sale price and the Agreed Price; plus
 - b) any costs and expenses incurred in the re-sale; plus
 - c) interest at the rate of two (2) percentage points above the base lending rate for the time being of Standard Chartered bank of Kenya Limited on such part of the Agreed Price as is from time to time outstanding (giving account for the amount of the Special Model Deposit (if any) and for all sums received under any re-sale contract on account of the re-sale price) after the estimated Delivery Date.
8. The Seller will endeavor to secure delivery of the Special Model by the estimated Delivery Date (if any) but does not guarantee the time of delivery and shall not be liable for damages or claims of any kind (including interest on Special Model Deposit) in respect of delay in delivery. In particular, and without prejudice to the generality of the foregoing, the Seller shall not be liable for any delays arising from loss of or damage to the Special Model during transit and any subsequent re-ordering of the Special Model from the Manufacturer or Concessionaire