

TERMS AND CONDITIONS OF SERVICE

The Terms and Conditions below (hereinafter “this Agreement”) shall apply to the provision of Services (as defined below) by Company to the Customer:

1. Definitions and Interpretations

1.1 Under this Agreement the terms below shall have the following meanings:

- 1.1.1 “Additional Works” means any additional repairs and/or other works found necessary after commencement of the Services that are over and above the Services initially agreed upon with the Customer at the point of delivery of the Motor Vehicle;
- 1.1.2 “Authorise Dealer” means an entity appointed by the Company to offer the Services to Customers under similar terms and conditions;
- 1.1.3 “Authorised Representative” means in relation to a Party, an individual who is duly empowered to bind the Party and whose authority is evidenced in writing (or other appropriate means of authorisation);
- 1.1.4 “Business Day” means the hours of 07:45am and 4:30pm Monday and Friday except gazetted public holidays in Kenya;
- 1.1.5 “Charges” means the charges payable by the Customer for Services rendered by the Company under this Agreement;
- 1.1.6 “Company” means Simba Corporation Limited/Bavaria Auto Limited/Xylon Motors Limited/Simba Caetano Formula Limited/Panda Auto Limited;
- 1.1.7 “Confidential Information” means all information (whether written, oral or in electronic form) concerning matters legal, financial, marketing, sales, technical, information technology, management, operations, business affairs, customers, or any other information of whatever nature regarding either Party and disclosed to or obtained or acquired by the other Party;
- 1.1.8 “Customer” means any person (including a legal entity where applicable) who seeks the Services from the Company;
- 1.1.9 “Consumable Supplies” means the items installed or inserted into the Motor Vehicle that are spent, drained, finished, exhausted or used up during or in the process of service, repair and maintenance of the Motor Vehicle;
- 1.1.10 “Company’s Representative” means the Company’s employee whose responsibilities in respect of the Customer and the Motor Vehicle shall include;
 - a) Taking delivery of the Motor Vehicle at the point of delivery of the Motor Vehicle;
 - b) Collection and collation of all information regarding the Motor Vehicle and the Customer and entry thereof onto the Vehicle Entry Form (as defined below); and
 - c) Communication with the Customer and/or his/her Authorised Representative on the proposed Services and the estimated Charges thereof, obtaining the necessary approval for commencement of or inclusion of Additional Works against approved estimated Charges, updating the Customer on the progress of the Services, advising the Customer on release, collection and/or or delivery of the Motor Vehicle on completion of the Services and payment of the Charges.

- 1.1.11 “Data Protection Act” shall mean the Data Protection Act of Kenya, No. 24 of 2019 and any subsequent amendments thereto;
- 1.1.12 “Effective Date” means 1st day of January, 2019;
- 1.1.13 “Event of Force Majeure” means any cause affecting the performance by a Party of any of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster but excluding the inability by the Customer to settle the Charges due to the Company;
- 1.1.14 “Job Card” means a record prepared by the Company’s Representative in respect of any Motor Vehicle delivered to the Company setting out details of the Services rendered, spare parts fitted, consumables utilised, labour costs, and the related Charges;
- 1.1.15 “Manufacturer” means in respect of any Motor Vehicle, the maker thereof and Manufacturer Standards shall be construed accordingly;
- 1.1.16 “Motor Vehicle” means any vehicle including a passenger vehicle, lorry, canter, motor cycle and/or tractor delivered to the Company and in respect of which the Services are sought by the Customer from the Company;
- 1.1.17 “Party” means either of the Company or the Customer and “Parties” shall be construed accordingly;
- 1.1.18 “Personal Data” as used herein will have the meaning assigned to it under the Data Protection Act;
- 1.1.19 “Quality Control Test” means the series of tests, including road tests, carried out on the Motor Vehicle before and after completion of services to ascertain the condition of the Motor Vehicle and the scope of Services required and upon completion, for confirmation that the Requested and/or Recommended Services and/or Additional Works (if any) have been performed.
- 1.1.20 “Quality Controller” means the Company’s employee whose role is to undertake the Quality Control Tests for purposes of ascertaining the exact nature of repairs to be undertaken on the Motor Vehicle and to further ensure that the Services performed under this contract are as agreed between the Company and the Customer;
- 1.1.21 “Recommended Services” means any mechanical repairs that are over and above the Requested Services required to be undertaken on the Motor Vehicle on the recommendation of the Quality Controller upon undertaking a Quality Control Test;
- 1.1.22 “Repeat Job” means mechanical repairs and/or Services undertaken on a Motor Vehicle pursuant to Clause 8 of this Agreement;
- 1.1.23 “Requested Services” means the Services requested by a Customer to be undertaken on a Motor Vehicle at the point of delivery;
- 1.1.24 “Spare Parts” means the genuine spare parts for the Motor Vehicle, lubricants and accessories and any modifications or alterations thereto supplied and/or installed during or in the process of the service, repair and maintenance of the Motor Vehicle;
- 1.1.25 “Services” means the provision of diagnostics, investigations, Recommended Services, Requested Services, Additional Works, maintenance and/or scheduled service to be performed on a Customer’s Motor Vehicle including body and mechanical works and as more specifically defined under Clause 2 hereunder;

- 1.1.26 “Taxes” means any and all taxes, levies, duties, charges, imposts or withholdings payable against the Charges including without limitation, value added tax, stamp duties and any penalties or interest payable in connection with any failure to pay or any delay in paying any of the same;
- 1.1.27 “Technician” means an employee of the Company responsible for rendering the technical services on the Motor vehicle;
- 1.1.28 “Vehicle Entry Form” means the document to be completed by the Company’s Representative at the point of delivery of the Motor Vehicle by the Customer and/or his/her representative indicating amongst other details the Customer’s name and contacts, make and model of the Motor Vehicle, Service required, proposed mode of payment for the Charges and a list of items present in the Motor Vehicle as detailed overleaf;
- 1.1.29 “Workshop” means the part of the Company’s premises (or those set up by the Company’s Authorised Dealer/s) at which the Services are to be rendered.
- 1.2 In this Agreement (including any recitals and schedules thereto), unless the context otherwise requires:
- 1.2.1 references to any Statute or statutory provision shall include any Statute or statutory provision that amends or replaces or has amended or replaced it and shall include any subordinate legislation made under the relevant Statute;
- 1.2.2 words denoting the singular shall include the plural and vice versa and reference to the masculine gender includes a reference to the feminine gender and neuter and vice versa;
- 1.2.3 references to Sections, clauses, sub-clauses and Schedules, unless otherwise provided, are to be construed as references to the sections, clauses and sub-clauses of and the schedules to this Agreement;
- 1.2.4 the expression “person” includes a natural person, body corporate, unincorporated body, trust, joint venture, association, statutory corporation, state, state agency, governmental authority or firm;
- 1.2.5 references to costs, charges, expenses or remuneration shall be deemed to include, in addition, references to any value added tax or similar tax charged or chargeable in respect thereof;
- 1.2.6 references to the expression “month” mean a calendar month;
- 1.2.7 references to indemnifying any person against any circumstances include indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against that person and all loss or damage and all payments, costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;
- 1.2.8 reference to these “Terms and Conditions”/ “Conditions” shall mean the terms and conditions set out herein and as may from time to time be amended by the Company; and
- 1.2.9 references in this Agreement to “consent from” or “notice” by either Party to the other or any other similar expression shall mean consent or notice (as the case may be) issued in writing by way of letter, email, a short message service (SMS), and/or over the telephone.

1.3. Section and clause headings and headings contained in the Schedules are for convenience only and shall not affect the interpretation of this Agreement.

2. **Scope of Services**

2.1 The Company shall provide the Services as recommended by the Manufacturer and/or as instructed and agreed between the Company and Customer. While the Company shall be under no obligation to do so, it may provide such Services (whether in addition to or in lieu of such Services as may be expressly stated in or necessarily implied by the instructions overleaf) as it shall in its own discretion consider necessary or requisite in order to render the Motor Vehicle in proper order and it shall be entitled to charge and be paid accordingly.

2.2 The Services shall be provided at the Company's designated Workshop or in the alternative, at such other place as shall be agreed in writing by the Parties.

2.3 Except where agreed with the Customer, the Services shall include labour, Consumable Supplies and Spare Parts utilised by the Company for the provision of the Services.

2.4 The Company shall render the Services subject to the Exclusions set out under Clause 3.10 and the Warranties and Representations under this Agreement.

2.5 This Agreement does not place any obligations on either Party unless and until the Customer issues a Purchase Order (PO) identifying the services required and the vehicle accepted by the Company for the Services.

3. **Vehicle Entry, Inspection and Commencement of Services**

3.1 The Motor Vehicle shall be delivered by the Customer and/or his/her Authorised Representative at the Company's Workshop or at such other place as may be agreed between the Customer and the Company.

3.2 The Motor Vehicle shall be received by the Company's Representative who shall inspect the Motor Vehicle in the presence of the Customer and further complete the Company's Vehicle Entry Form (in triplicate).

3.3 The Customer shall provide the information, documents, data and details required in respect of the Customer and the Motor Vehicle to facilitate the completion of the Vehicle Entry Form including but not limited to the Customer's name and contacts, make and model of the Motor Vehicle, Services required, proposed mode of payment for the Charges and a list of items present in the Motor Vehicle.

3.4 Where the Customer brings in a Motor Vehicle for mechanical repairs and requests for a pre service road test, the Company will allocate a Quality Controller to conduct the road test to enable the Company ascertain the exact nature of repairs required on the Motor Vehicle. The Customer may accompany the Quality Controller on the test drive.

3.5 The Quality Controller shall upon undertaking the road test advise and recommend to the Customer the mechanical repairs (if any) required to be undertaken on the Motor Vehicle ("the Recommended Services).

3.6 The Company's Representative shall note on the Vehicle Entry Form a summary of the Requested Services and where applicable, the Recommended Services to be undertaken on the Motor Vehicle. The Requested Services and/or Recommended Services shall together form the Agreed Services. The Customer and the Company's Representative shall upon completion of the Vehicle Entry Form sign the Form as provided therein.

3.7 The Motor Vehicle shall thereafter be delivered to the Technician together with a copy of the Vehicle Entry Form and a Job Card completed on the basis of the information set out on the Vehicle Entry Form to enable commencement of the Agreed Services. The Customer hereby acknowledges and agrees that by so executing the Vehicle Entry Form, consent is thereby issued

to the Company to undertake the Agreed Services and that further, the Customer shall meet the attendant costs and Charges.

3.8 **Estimates**

An estimate of costs (“the Estimate”) shall be provided to the Customer in the following instances:

- (i) Where the Services required are of an investigative nature (“Diagnostics”); or
- (ii) Where, upon commencement of the Services on the Motor Vehicle it becomes evident to the Technician that additional repairs and/or other service (“Additional Works”) are required on the Vehicle over and above the Agreed Services agreed upon with the Customer at the point of delivery of the Motor Vehicle; particularly where such repairs relate to the Customer’s safety.

Subject to Clause 3.8.1 and 3.8.2, it is understood and agreed by the Parties that such estimates by themselves shall not be the basis or form part of any agreement between the Parties.

3.8.1 **Diagnostics**

- (i) Upon completion of Diagnostics, the Company’s Representative shall advise the Customer via email and/or any other agreed method of communication, of the findings thereof and further provide the Customer with a copy of the report generated (“the Diagnostics Report”), the Estimate of the work required and the costs thereof together with an invoice setting out the Charges payable for the Diagnostics which Charges shall be settled by the Customer as set out under Clause 8 below.
- (ii) The Company’s Representative will in addition to 3.8.1 i) above request the Customer for consent/approval to proceed with the repair of the Motor Vehicle on the basis of the findings of the Diagnostics Report.
- (iii) The Customer and/or the Customer’s Authorised Representative shall within 24 hours of receipt of the communication affirm, confirm and/or give approval for the undertaking of such repairs by email and/or any other agreed method of communication.
- (iv) It is hereby agreed and acknowledged that by issuing the affirmation, confirmation and/or approval, the Customer and/or Customer’s Authorised Representative confirms that the proposed repairs may be undertaken by the Company and that further, the Customer shall meet the attendant costs and Charges.
- (v) Where the Customer gives such confirmation, affirmation and/or approval of the Works, the Company shall proceed to carry out the said works.
- (vi) In the event the Customer fails to communicate within the set timelines and/or objects to the undertaking of the repairs, the Company shall require that the Customer collects the Motor Vehicle upon settlement of the applicable Charges and as set out under Clause 7 of this Agreement.

3.8.2 **Additional Works**

- (i) Where it appears to the Technician after commencement of the Agreed Services that Additional Works on the Motor Vehicle are necessary, the Company shall duly advise the Customer and/or the Customer’s Authorised Representative via email and/or any other agreed method of communication. The communication shall provide details of the proposed Additional Works and the applicable costs with a request for approval to proceed.
- (ii) The Customer and/or the Customer’s Authorised Representative shall thereafter and within 24 hours of receipt of the communication affirm, confirm and/or give approval

for the undertaking of such Additional Works by email and/or any other agreed method of communication.

- (iii) It is hereby agreed and acknowledged that by issuing the affirmation, confirmation and/or approval, the Customer and/or Customer's Authorised Representative confirms that the proposed Additional Works may be undertaken by the Company and that further, the Customer shall meet the attendant costs and Charges.
- (iv) Where the Customer gives such confirmation, affirmation and/or approval of the Additional Works, the Company shall proceed to carry out the said works.
- (v) In the event that the Customer fails to communicate within the set timelines and/or objects to the proposed Additional Works, the Company shall undertake and complete the works in line with the Agreed Services as per the Customer's as set out on the Vehicle Entry Form and Job Card and proceed to close the Job Card.
- (vi) Upon completion of the Services, the Customer shall be required to settle the Charges and further collect the Motor Vehicle as provide under Clause 7 herein below.

3.9 Parts Replacement

- 3.9.1 It is hereby agreed and acknowledged that the Company shall as part of the Services repair and/or replace certain parts of the Motor Vehicle which have failed and/or are not performing as required under normal use. The Company shall in so doing use genuine spare parts the cost of which shall be met by the Customer.
- 3.9.2 Spare parts required for replacement that are not available in stock will be shipped by the Company within reasonable timelines. The Company shall in such instances inform the Customer of the unavailability of the spare parts and the Customer reserves the right to have the Services completed without replacement of the spare part/s.
- 3.9.3 Where the Customer opts to have the Services completed without replacement of any spare part/s as set out under Clause 3.9.2 above, the Customer shall keep the Company indemnified against any and all claims that may arise as a result of non-replacement of the specific spare part/s, from whatever quarters such claim may arise.
- 3.9.4 Any parts removed from the Motor Vehicle during delivery of the Services shall be returned to the Customer and/or Customer's Authorised Representative at the time of collection of the Motor Vehicle for disposal as the Customer deems fit.

3.10 Exclusions

- 3.10.1 Except as otherwise provided in this Agreement, the Company shall not be liable whatsoever for any damage, costs, losses or liability whatsoever arising where it receives for Services any of the following categories of Vehicles:
 - a) Vehicles that have not been specified for sale or use in the Kenyan Market;
 - b) Vehicles that have been put to unauthorised use as defined in the Manufacturer's User Manual;
 - c) Mechanical faults resulting from or consequent to any Services rendered in respect of a Motor Vehicle at establishments other than those under than the at the Company's Workshop or that of an Authorised Dealer.
- 3.10.2 The Company hereby reserves the right to reject and to further require the Customer and/or Customer's Authorised Representative to collect the Motor Vehicle at any time after the delivery of the Motor Vehicle in the event that it comes to the Company's knowledge that the receipt and acceptance of the Motor Vehicle by the Company or its

Authorised Dealer was as a result of a misrepresentation by the Customer on any of the above matters.

3.10.3 It is further hereby agreed that in so doing, the Company shall not incur any liability and further that the Customer shall meet any cost incurred and further settle the Charges for any Services rendered by the Company in that regard.

4. Customer's Responsibilities

In order to enable the Company to fulfil its obligations under this Agreement the Customer shall at its sole cost and expense: -

- 4.1 Provide the information, documents, data and details required by the Company in respect of the Customer and the Motor Vehicle.
- 4.2 Maintain the Motor Vehicle in the manner recommended by the Manufacturer and as shall be recommended by the Company and/or the Company's Authorised Representatives from time to time.
- 4.3 Ensure that the Motor Vehicle is delivered for Services at the recommended intervals.
- 4.4 Pay the Charges for the Services rendered and in the manner as set out under Clause 7 hereof.
- 4.5 Issue the necessary affirmations, confirmations and approvals required from time to time in the manner and within the set timelines.
- 4.6 Comply with instructions issued by the Company in regard to the delivery and collection of the Motor Vehicle.

5. Undertakings by the Company

The Company undertakes to:

- 5.1 Provide the Services on the terms and conditions set out herein.
- 5.2 Provide the Services within the agreed timelines or as shall be further agreed with the Customer from time to time.
- 5.3 Ensure that all the employees, agents and representatives delivering the Services under this Agreement shall take reasonable care and caution.
- 5.4 Ensure that all Spare Parts and Consumables used in the course of Service delivery are of merchantable quality and fit for the intended purpose.
- 5.5 Inform the Customer of recommended service intervals at the completion of every Service.
- 5.6 Provide skilled and competent personnel at all times for the provision of the Services.

6. Completion of Services and Quality Control

- 6.1 Upon completion of the Services, the Company shall undertake a Post Service Inspection ("Inspection") on the Vehicle to verify that the Agreed Services and, where applicable, the Additional Works have been carried out on the Motor Vehicle. The Inspection shall be carried out by the Quality Controller who shall note all findings on the Quality Control Check Sheet.
- 6.2 Subject to Clause 8 (Conditions for Repeat Jobs) hereunder, the Quality Controller shall upon undertaking the Inspection sign and stamp the Job Card to certify that the Services have been completed and further that the same have passed the Quality Control Test.
- 6.3 The Quality Controller shall in addition complete a report (in triplicate) setting out any other and/or further works required on the Motor Vehicle for communication to the Customer and for

attention at the next scheduled service (“the Defect Report”). The Defect Report shall be distributed as follows:

- (i) One copy shall be retained by the Quality Controller
- (ii) Once copy shall be retained by the Company’s Representative for future follow up with the Customer
- (iii) One Copy shall be handed to the Customer on collection of the Motor Vehicle.

7. Payment and Collection of Motor Vehicles

7.1 Payments

7.1.1 Upon completion of the Services, the Company shall prepare an invoice setting out the Charges payable for the Services including the cost of Recommended Repairs and Additional Works (if any), Spare Parts and Consumables together with the total labour costs payable for the Services rendered (“the Total Charges”).

7.1.2 The Company’s Representative shall advise the Customer via email and/or any other agreed method of communication of completion of Services of the Total Charges payable and further require the Customer to collect the Motor Vehicle on payment of the Charges (“the Notification”).

7.1.3 Payment of the Charges by the Customer and collection of the Motor Vehicle by the Customer and/or the Customer’s Authorised Representative shall be done not more than 48 hours of receipt of the Notification under Clause 8 .1.2.

7.1.4 The Charges shall be settled by the Customer by way of Cash, Cheque or Credit Card. Upon payment thereof, the account shall be marked as settled.

7.1.5 For Customers with an approved account, the Company shall prepare a Pro forma Invoice against which the Customer shall submit a Local Purchase Order (“LPO”) for reflection on the Customer Account. The Customer shall settle the account in the manner and within the timelines agreed with the Company.

7.1.6 All payments shall be subject to Value Added Tax and all government levies, where applicable, at the published statutory rate.

7.1.7 In the event of any delays against the payment dates, the Company 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.

7.1.8 The Customer understands and hereby consents that the Company may:

- i. Carry out credit checks or obtain the Customer’s credit information from a Credit Reference Bureau;
- ii. in the event of default of the Customer’s payment obligations, be at liberty to refer the Customer’s details to the Credit Reference Bureau for listing. The Company shall be at liberty to disclose to the Bureau details relating to the Customer’s account including details of the Customer’s default of its payment obligations.

7.2 Collection of Motor Vehicle

7.2.1 The Motor Vehicle shall be collected by the Customer or his/her Authorized Representative from the Company’s Workshop or other place of redelivery as may be agreed in writing between the Company and the Customer.

7.2.2 The Company shall issue the following documents to the Customer at the point of collection;

- (i) A copy of the invoice and proof of payment;
- (ii) Duly completed gate pass (attached hereto as Schedule 4); and
- (iii) A copy of the Defect Report (if any).

7.2.3 Where the Customer has sent a representative to collect the Motor Vehicle, an authorization letter shall be submitted to the Company at the time of collection of the Motor Vehicle.

7.2.4 A Post Service Road Test prior to taking delivery of the Motor Vehicle may at the request of the Customer be conducted by the Quality Controller to confirm the condition of the Motor Vehicle. In these circumstance, the Customer shall subject to the provisions of Clause 8 herein below sign against the requisite documents confirming satisfaction with the work done.

7.2.5 The Customer hereby acknowledges that in the event of failure to collect the Motor Vehicle as required and within the timelines set out under Clause 7.1.3 above, the Company shall be entitled to levy storage charges at such rates and for such period to be determined by the Company (“Storage Charges”).

7.2.6 Further, the Customer acknowledges and agrees that where the Motor Vehicle remains uncollected by the Customer for a period of more than One (1) month from the date of the Notification, the Company shall have the right to dispose of the Motor Vehicle as set out under the Disposal of Uncollected Goods Act, Cap 38 of the Laws of Kenya.

8. Repeat Jobs

8.1 Subject to the provisions of Clause 8.3 hereunder, the Company shall undertake repeat jobs on the Customer’s Motor Vehicle provided that in all cases, the Customer complaints are raised within 24 Hours of collection of the Motor Vehicle.

8.2 Any complaints raised after 24 Hours of collection shall be deemed to be a procurement of fresh Services which shall be undertaken subject to the terms and conditions of this Agreement.

8.3 The Motor Vehicle shall be delivered to the Workshop or agreed place of delivery for verification of the complaint and that the same qualifies as a repeat job by reference to the service history of the Motor Vehicle.

8.4 No charges shall be raised for repeat jobs.

9. Representations and Warranties

9.1 The Company warrants and represents to the Customer that:

9.1.1 This Agreement constitute valid and legally binding obligations of the Company enforceable in accordance with its terms;

9.1.2 The Company shall render the Requested and/or Recommended Services and Additional Works (if any) as set out in this Agreement;

9.1.3 The Company shall ensure that all the employees, agents and representatives delivering the Services under this Agreement shall take reasonable care and caution;

9.1.4 The Company shall provide skilled and competent personnel at all times for the provision of the Services; and

9.1.5 All Spare Parts and Consumables used in the course of Service delivery are of merchantable quality and fit for the intended purpose.

9.2 The Customer warrants and represents to the Company that:

- 9.2.1 This Agreement constitutes valid and legally binding obligations of the Customer enforceable in accordance with its terms;
- 9.2.2 All authorizations, approvals and consents required in connection with the entry into, performance, validity and enforceability of the Services have been duly obtained or effected and are in full force and effect;
- 9.2.3 Upon completion of Services, all Charges shall be paid in the manner set out under Clause 7 hereof.

10. Variation

No waiver, alteration, variation or addition to this Agreement shall be effective unless made in writing on or after the date of this Agreement by the Parties and accepted by an Authorised Signatory of each Party.

11. Force Majeure

11.1 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.

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

11.3 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.

12. Limitation of Liability and Indemnity

12.1 The Customer acknowledges that the Company's obligations and liabilities in respect of the Services rendered under this Agreement are exhaustively defined herein (and in any document referred to herein). The Company shall accept no liability whatsoever for any losses, injury or damages to persons or property, of whatever nature or however caused or for any act or default of the Company or its servants or agents where **such** loss or damage has been directly caused by the negligence or willful default of the Company or its employees in the performance of their duties. Notwithstanding the foregoing, the maximum liability of the Company shall not exceed the total cost of the Service.

12.2 The Company shall accept no liability whatsoever for any losses, injury or damages to persons or property, of whatever nature or however caused to such person or property arising from the Customer's failure or delay to give instructions on Requested Services or approve Additional Work, failure to settle outstanding and/or storage charges payable upon completion of Services, failure to collect the Motor Vehicle upon Service delivery or as advised by the Company and all risks attached thereto including but not limited the disposal of uncollected goods by the Company.

12.3 The Company, its employees or agents shall not be liable to the Customer in any manner for:

- 12.3.1 any civil, criminal, or any administrative or investigative claim arising from any act or omission of the Customer, its employees or agents or breach by the Customer of its obligations under this Agreement in relation to the Motor Vehicle; or
 - 12.3.2 any financial loss, loss of business, profit, savings, revenue, or goodwill arising from the Customer's delay in issuing requisite instruction pursuant to Clauses 3.8.1 and 3.8.2, detention of the Motor Vehicle for non-payment of Charges (and Storage Charges if any) and resultant disposal of the Motor Vehicle by the Company for recovery of Charges and Storage Charges; or
 - 12.3.3 any loss or damage or deterioration in value of the Motor Vehicle due to delay or failure to collect the Motor Vehicle on completion of Services regardless of the date of payment; or
 - 12.3.4 any indirect, consequential or contingent loss of whatever nature arising from delivery of the Services as set out in this Agreement; or
 - 12.3.5 acts of any third parties not under the control of the Company that result in the loss of, or damage to, the Customer's Motor Vehicle loss.
- 12.4 The Customer hereby indemnifies (on a full and unqualified indemnity basis) the Company, its employees and agents from and against all liability disclaimed by the Company pursuant to the provisions of Clause 12.2 and will protect and defend the Company, its employees and agents from any action, claim or proceeding alleging such liability, and will pay all expenses and satisfy all judgments that may be incurred by or rendered against the Company, its employees and agents in connection therewith.

13. Lien

The Customer hereby grants to the Company, a general lien upon, and right of set-off against, all monies, securities, instruments and other property or rights of the Customer now or hereafter in the possession of or under the control of or on deposit with the Company or any office, agency or affiliate of the Company 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 Customer until such obligations of the Customer are paid in full.

14. 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.

15. Anti-Corruption

15.1 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").

15.2 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.

15.3 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 co-operate with each other in investigating and responding to such actual, alleged or attempted violation.

15.4 The Seller may terminate this Agreement forthwith if it has reasonable grounds to suspect that the Purchaser has violated any Anti-Corruption Law

16. Data Protection

16.1 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

16.2 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.

16.3 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.

17. Governing Law, Jurisdiction and Dispute Resolution

17.1 Governing law

This Agreement shall be governed by and construed in accordance with the Laws of Kenya.

17.2 In the event of any dispute arising between the parties hereto then such dispute (if not resolved by mutual agreement within thirty (30) days) shall be determined by a Court of competent jurisdiction.

18. 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.

19. General

19.1 These Conditions and other matters appearing on face of this document shall apply to the Services 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 Customer 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 Services shall prevail over any inconsistent provisions of these Conditions. These Conditions are subject to change without notice by the Customer.

- 19.2 All requests for Services shall be deemed to be an offer by the Customer to procure the Services pursuant to these Conditions. By placement of a request, the Customer confirms having read and understood these Conditions and agrees to be bound by them.
- 19.3 The rights and remedies of each of the Parties in connection herewith are cumulative and are not exclusive of any rights or remedies provided by law.
- 19.4 Failure by either Party to exercise any rights under this Agreement 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 this Agreement will not be deemed a waiver of any other default.
- 19.5 If any provision of this Agreement 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 this Agreement shall not be affected and the legality, validity and enforceability of the whole of this Agreement 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.