

## STANDARD TERMS AND CONDITIONS OF SALE (EQUIPMENT, PARTS AND SERVICES)

### 1. DEFINITIONS

"Affiliate" means, as to any specified person, any other person who directly or indirectly (a) owns or is owned by; (b) is in the control of or is controlled by; or (c) is under common ownership and control with, such specified person; "Amount Payable" means the amount of any debit balance shown on an invoice or Contract; "Commissioning" means, in respect to New Goods, when the Goods are assembled and operating under normal conditions, and with respect to Used Goods, when the Goods are assembled; "Contract" means the Order Acceptance, these Terms, the Service Delivery Schedule, the Quote and the Order and any other document which is attached to or incorporated by reference in the Order Acceptance, these Terms or the Quote; "Customer" means the person who orders the Goods and/or Services from PANAFRICAN as identified in the Order and includes any permitted transferee; "Delivery Date" means the date for delivery of the Goods and/or Services as specified in the Contract; "Deposit" means any payment of funds or transfer of value made in advance by a Customer against an Order, which shall be non-refundable; "Due Date" means the due date for payment as specified in an invoice or a Contract or as otherwise determined in accordance with these Terms; "Goods" means the goods specified in the Order which PANAFRICAN agrees to provide in the Order Acceptance and shall comprise New Goods and Used Goods; "Incoterms" means the most current version of Incoterms at the time of the Order, amended as necessary to take into account these Terms and the specific provisions of a Contract; "New Goods" means Goods in new condition manufactured by a third party or any ex demonstration Goods; "Order" means the purchase order issued by the Customer to PANAFRICAN for the Goods and/or Services; "Order Acceptance" means PANAFRICAN's acceptance of the Order and consequent agreement to the Contract by either delivering the Goods and/or Services or issuing the Customer with a document named 'Order Acceptance' (or similar); "PANAFRICAN" means PANAFRICAN Equipment Group Limited or any of its subsidiaries stated as entering into the Contract with the Customer in the Order; "Party" means PANAFRICAN or the Customer (as the context requires); "Quote" means the quote or proposal document issued by PANAFRICAN to the Customer for the Goods and/or Services; "Service Specification" means the schedule setting out details of the Services to be provided by PANAFRICAN provided to the Customer with the Quote; "Services" means the services specified in the Order which PANAFRICAN agrees to provide in the Order Acceptance; "Terms" means these standard terms and conditions of sale (equipment and parts); "US\$" means United States dollar; "Used Goods" means second hand Goods. In these Terms, unless the context otherwise requires: headings are for ease of reference only and do not affect interpretation; the singular includes the plural and vice versa; a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time; a reference to a person includes a natural person, partnership, body corporate, association, governmental or

local authority or agency or other entity; and the meaning of general words is not limited by specific examples introduced by the words including, for example or similar expressions. The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that agreement shall not apply.

### 2. TERMS OF SUPPLY

2.1 PANAFRICAN may accept or reject any Order in its absolute discretion and for its sole interest at any time.

2.2 Any quotation made by PANAFRICAN shall constitute an invitation to treat and not an offer. PANAFRICAN may withdraw or amend any quotation at any time. PANAFRICAN will endeavour to hold the terms of any quotation given by it for a period of 7 days or for such other period as is specified in writing; but shall have no obligation or liability to do so.

2.3 Where PANAFRICAN has provided a purchase or credit facility to the Customer, PANAFRICAN may withdraw that facility at any time without prior notice, and PANAFRICAN reserves the right to review the extent, nature and duration of such facilities at all times.

2.3 Any Order must be accompanied by sufficient information to enable PANAFRICAN to proceed with the Order forthwith and thereafter any modification shall be subject to prior agreement by PANAFRICAN in writing. All verbal Orders and amendments to Orders must be confirmed by the Customer in writing. An Order shall contain an order number, a date, the Quote reference, and a description of the Goods (and their respective reference numbers) and/or the Services.

2.4 All descriptive and technical specifications, drawings, catalogues, particulars, weights and dimensions submitted by PANAFRICAN with the Quote or otherwise are approximate only and none of these shall form part of any Contract. In any event, figures for performance of the Goods vary according to the nature of the site upon which the Goods are being used, and the circumstances of use.

### 3. FORMATION OF CONTRACT

3.1 The Contract contains the entire agreement between the Parties with respect to its subject matter and supersedes all prior communications and agreements. The Customer acknowledges that in entering into the Contract it does not rely on any communication that has not been expressly set out in the Contract. No terms and conditions submitted by either Party that are in addition to, different from, or inconsistent with these Terms shall be binding upon either Party unless specifically and expressly agreed in writing.

3.2 These Terms apply to the exclusion of any other terms or conditions that may be sought to be invoked by the Customer (including, without limitation, any terms referenced in any Order or on any online website or electronic platform), or which are implied by trade, custom, practice or course of dealing. PANAFRICAN will not supply on, and expressly rejects the Customer's standard terms and conditions of purchase.

3.3 PANAFRICAN shall be entitled to amend these Terms from time to time and shall provide the Customer with a copy of the revised Terms as

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and when amended. Any Contract entered into by the Parties shall be on the basis of the most current version of these Terms at the time of the Order.

3.4 The Customer expressly acknowledges and agrees that any Order which it issues to PANAFRICAN shall be an offer to procure Goods and/or Services from PANAFRICAN under these Terms, and that upon Order Acceptance, both PANAFRICAN and the Customer shall be bound by the terms of the Contract.

3.5 A Contract for the supply of Goods and/or Services is made upon Order Acceptance.

3.6 By accepting possession of any Goods or receiving the benefit of any Services, the Customer acknowledges that Goods and/or Services are supplied in accordance with the terms and conditions of these Terms.

3.6 If there is any conflict or inconsistency between the parts constituting the Contract the parts will rank in the following order: 1. the Terms; 2. any other document attached or referred to in the Terms; 3. the Order Acceptance; 4. any other document attached or referred to in the Order Acceptance; 5. the Quote; 6. any other document attached or referred to in the Quote; and 7. the Order.

#### 4. PRICE

4.1 The prices for Goods shall be as set out in the Quote (including the relevant Incoterm), provided that such prices may be subject to alteration by PANAFRICAN from time to time without prior notice to reflect any increase in cost to PANAFRICAN of supplying such Goods to the Customer (including, without limitation, any increase in custom import duties, levies and/or tariffs, and/or any increase due to a change in any foreign currency exchange rate applicable to the supply of such Goods, if relevant). If no Incoterm is specified in the Contract, all prices shall be deemed to be Incoterm Ex Works and shall not include freight, insurance or taxes. The prices for Services set out in the Quote shall not be binding; if on further examination, PANAFRICAN deems that work is necessary which is additional or different to that specified in the Services Specification, PANAFRICAN shall have the right to carry out such work and charge the cost thereof to the Customer provided that PANAFRICAN will not undertake such additional or different work if the cost is estimated to exceed 20% of the price set out in the Quote without first obtaining the Customer's written consent.

4.2 PANAFRICAN may at any time require the Customer to provide security against default by way of (i) an unconditional bank guarantee from a bank acceptable to PANAFRICAN or a security assignment of the benefit of the insurance policy referred to in paragraph 10.1, in either case in a form acceptable to PANAFRICAN in its sole discretion, or (ii) a cash deposit, or (iii) a charge against assets of the Customer, in a form acceptable to PANAFRICAN in its sole discretion. Any such security provided shall be released within 7 days of payment of the Amount Payable. In addition, PANAFRICAN may at any time enter into insurance or surety arrangements with third parties as security against default. In such circumstances, the

Customer shall be required, at its cost, to provide all assistance as may be reasonably requested by PANAFRICAN or the third party to enable such arrangements to be put in place.

4.3 All sums payable under any Contract are exclusive of Value Added Tax or Goods Sales Tax or equivalent (if and to the extent payable). Any Value Added Tax, Goods Sales Tax, other sales taxes, or any other applicable taxes or duties, whether government, local or otherwise, which PANAFRICAN may be required to pay or collect shall be added to the price for the Goods and/or Services supplied and paid by the Customer unless a valid exemption certificate is furnished to PANAFRICAN before the Due Date.

#### 5. PAYMENT

5.1 PANAFRICAN offers a variety of payment terms. Specific terms may be agreed with the Customer during negotiations and will be confirmed in the Contract. If no such terms are agreed, invoices from PANAFRICAN shall be due for payment prior to the Delivery Date.

5.2 The Customer shall pay the whole Amount Payable on or before the Due Date, and such payment shall be without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, save as may be required by law. If the law of the jurisdiction in which the Goods and/or Services are being supplied to the Customer requires that withholding tax is deducted from payments, the Customer shall deduct withholding tax at the applicable percentage from payments due to PANAFRICAN and pay such amounts to the appropriate Revenue Authority on PANAFRICAN's behalf, and shall provide PANAFRICAN with a valid receipt for the withholding tax so paid within 30 days of the Due Date. If such receipt is not provided within this 30 day period, PANAFRICAN shall be entitled to treat the amount of the withholding tax deducted as an unpaid debt and the provisions of paragraph 5.4 shall apply accordingly.

5.3 If the Contract permits payment by letter of credit, the letter of credit shall be irrevocable and satisfactory to PANAFRICAN. It shall be established by the Customer in favour of PANAFRICAN immediately upon receipt of the Order Acceptance and be advised through and confirmed by a first class bank acceptable to PANAFRICAN within 5 days of Order Acceptance. The letter of credit must allow for trans-shipment and partial shipment and provide for sight payment upon presentation of shipping documents. The letter of credit shall be for the price payable for the Goods (together with any tax or duty payable) and shall be valid for six months or such longer period as PANAFRICAN may require based on prevailing estimates of delivery lead times. All charges in connection with the letter of credit, including those of the confirmation bank, are for the Customer's account unless otherwise agreed in the Contract. Any failure of the Customer to comply with this paragraph 5.3 shall entitle PANAFRICAN to treat the Contract as cancelled and to charge the Customer the cancellation charge referred to in paragraph 6.1 upon the terms referred to in such paragraph.

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5.4 The Customer agrees that if any Amount Payable or other amount due under the Contract is not paid by the Due Date PANAFRICAN shall be entitled, without prejudice to any other rights available to it:

5.4.1 to charge and recover interest at the rate of 2% per month or part thereof (or such other rate as the law of the jurisdiction in which the Goods and/or Services are being supplied to the Customer may dictate) on the Amount Payable overdue for the period between the Due Date until payment is made in full; and

5.4.2 to discontinue forthwith the supply of any further Goods or Services under any other Contract. In such circumstances PANAFRICAN shall be under no liability in respect of, or arising out of, or in connection with such discontinuance and shall be entitled to treat the Contract as cancelled and to charge the Customer the cancellation charge referred to in paragraph 6.1 upon the terms referred to in such paragraph.

5.5 PANAFRICAN may demand payment of interest by the Customer in accordance with paragraph 5.4.1 at any time. Failure to demand interest does not constitute a waiver of the entitlement to interest.

5.6 All payments under the Terms shall be made:

5.6.1 in US\$ unless (i) the Contract specifies otherwise; or (ii) the law of the jurisdiction in which the Goods and/or Services are being supplied to the Customer requires payment in the local currency, in which case the amount of the payment shall be converted at the weighted average of the US\$ / local currency interbank exchange rate for the 5 days immediately preceding the date of issue of the invoice;

5.6.2 so that all monies due shall have been cleared and credited to PANAFRICAN's bank account with full value by the Due Date, with any bank charges applicable being paid by the Customer unless otherwise agreed in the Contract; and

5.6.3 by direct bank transfer to PANAFRICAN's nominated bank account or by such other means as may be agreed between the Parties in the Contract provided that payments made by any other means will not be considered received and credited to the Customer's account until the monies have been cleared and credited to PANAFRICAN's bank account with full value. Any bounced cheque or returned payment shall be subject to an administrative charge of US\$75 per transaction.

5.7 PANAFRICAN is entitled to allocate payments from the Customer as satisfying specific invoices outstanding (including late payment interest arising) in its absolute discretion unless the Customer notifies PANAFRICAN in writing at the time of relevant payment which invoice it is settling.

5.8 If an amount claimed by PANAFRICAN in an invoice is in dispute, the Customer must advise PANAFRICAN in writing of the exact nature of the dispute within 15 days of the date of the relevant invoice. The amount not in dispute must be paid by the Customer by the Due Date. Any disputed amount that is ultimately determined to have been payable to PANAFRICAN must be paid by the Customer with interest at the rate of 2% per month or part thereof (or such other rate as the law of the jurisdiction in which the

Goods and/or Services are being supplied to the Customer may dictate) from the original Due Date until the date on which payment is made. PANAFRICAN shall be entitled to deem an invoice as accepted by the Customer if no dispute is raised within the 5 day time period referred to in this paragraph.

5.9 A certificate under the hand of any director or manager of PANAFRICAN relating to the Customer's indebtedness to PANAFRICAN, shall be *prima facie* proof of the amount of the Customer's indebtedness. It shall not be necessary to prove the appointment and authority of the person signing such certificate.

5.10 In the event that the Customer elects to finance the purchase of Goods through a separate agreement entered into between the Customer and a finance company selected by the Customer, the Customer may direct PANAFRICAN to transfer title to the Goods directly to the finance company and in such circumstances, title will transfer directly to the finance company upon full payment of the price for the Goods or as otherwise agreed in the finance agreement. Notwithstanding that the finance company may be recorded in the Contract as the purchaser of the Goods, these Terms will apply as between the Customer and PANAFRICAN, and the finance company agrees to these terms.

### 6. CANCELLATION AND RETURNS

6.1 In the event that the Customer wishes to cancel a Contract (or a part thereof), it shall give PANAFRICAN written notice of such proposed cancellation. Unless otherwise agreed in writing, PANAFRICAN may at its sole discretion accept or reject the request from the Customer to cancel a Contract. In the event of a request to cancel being accepted by PANAFRICAN, PANAFRICAN reserves the right to retain any Deposit and/or apply a cancellation charge of (i) for standard Goods, 15% of the purchase price; and (ii) for non-standard Goods, 30% of the purchase price and for Services, costs incurred plus 30% of the contract price, provided that the minimum cancellation charge shall equate to the amount of the Deposit paid by the Customer in respect of the Contract being cancelled (or part thereof). Upon the Customer's acceptance of any cancellation charge, PANAFRICAN shall then confirm in writing the cancellation of the Contract, and any cancellation charge shall be paid by the Customer within 10 days of PANAFRICAN issuing the corresponding invoice. The Parties agree that such sums payable to PANAFRICAN under this paragraph (including the Deposit) are a genuine pre-estimate of the costs and losses which PANAFRICAN would suffer from the Customer failing to take delivery of the Goods and/or Services.

6.2 The Customer shall not be entitled to return any Goods unless otherwise agreed in the Contract or with the prior agreement of PANAFRICAN in writing.

6.3 Subject to paragraph 6.2 and 18.2, and excluding as set out in paragraph 7.6, the following conditions apply to all returned Goods:

6.3.1 the Customer has to notify PANAFRICAN within the earlier of 4 days

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of delivery of the relevant Goods in accordance with paragraph 7.1 or 14 days of arrival of the delivering vessel/aircraft at a destination port (depending on the agreed Incoterm for delivery);

6.3.2 after notification PANAFRICAN shall generate a written "Return Note" instructing the Customer to return the Goods to a PANAFRICAN designated warehouse; and

6.3.3 the Customer has 14 days from the date of the Return Note for the Goods to be received at the PANAFRICAN designated warehouse or such other location as may be advised by PANAFRICAN in the Return Note.

6.4 PANAFRICAN will not accept any liability, risk or responsibility for returned Goods unless there has been prior written arrangement by way of a PANAFRICAN generated Return Note. The Return Note provides preliminary approval for the return of Goods. Full and final acceptance is at PANAFRICAN's sole discretion and is subject to the following conditions:

6.4.1 a copy of the Return Note authorisation must accompany the Goods;

6.4.2 Goods will be subject to a visual and technical inspection upon receipt at the designated warehouse;

6.4.3 Goods returned must be undamaged, returned in original packaging (where applicable) and re-saleable as new;

6.4.4 Goods must not have been fitted or otherwise used in any manner;

6.4.5 Goods rejected by the receiving warehouse due to noncompliance with the above conditions will be held at the warehouse pending instructions from the Customer, and if not collected by the Customer within 3 months from receipt at the PANAFRICAN designated warehouse will be disposed of and the proceeds shall be for PANAFRICAN's account.

6.4 If the Goods are returned within 14 days from date of the Return Note and accepted by PANAFRICAN, the Customer shall receive a credit note for the full amount of the invoiced value subject to a handling charge of 15% of the price paid for the Goods. If the Goods are returned later than 14 days from date of the Return Note and/or the Goods are not accepted by PANAFRICAN, the Customer shall receive no credit and the full amount of the invoiced value for such Goods shall remain due and payable by the Customer subject, if applicable, to deduction of any disposal proceeds in accordance with paragraph 6.4.5. Freight costs to the PANAFRICAN designated warehouse for returned Goods are the responsibility of and for the Customer's account.

### 7. DELIVERY AND RISK

7.1 Delivery of Goods shall take place at the place nominated by PANAFRICAN, unless otherwise agreed in the Contract. Risk in the Goods shall pass to the Customer in accordance with the Incoterm referred to in paragraph 4.1. Delivery may be made in one or more instalments and at different times or by separate shipments or deliveries.

7.2 The Customer's obligation to take delivery of the Goods is a material obligation under this Contract. If PANAFRICAN is not able to deliver the Goods to the Customer on the Delivery Date (or on such other date as has been notified to the Customer) due to the Customer's inability, unavailability

or unwillingness to accept delivery, PANAFRICAN reserves the right to dispatch any Goods at PANAFRICAN's sole discretion or put them into storage at the expense and risk of the Customer. Such cost shall be immediately due and payable on demand.

7.3 If the Customer fails to collect or take delivery of the Goods and/or Services within 3 months of the Delivery Date, PANAFRICAN shall be entitled, without prejudice to its other rights, to terminate all or part of the Contract, to dispose of the Goods and to charge the Customer the cancellation charge referred to in paragraph 6.1 upon the terms referred to in such paragraph.

7.4 The Delivery Date is estimated in good faith and while reasonable effort is made to meet an estimated Delivery Date PANAFRICAN will not be liable for any loss incurred as a result of delay or failure to make any supply of Goods and/or Services by the Delivery Date. A delay in the Delivery Date does not entitle the Customer to cancel pending Orders.

7.5 PANAFRICAN shall not be liable to the Customer for short shipment claims, damage to Goods or Goods incorrectly supplied under a Contract, unless notification of such claims is received by PANAFRICAN in writing within the earlier of 4 days of delivery of the relevant Goods in accordance with paragraph 7.1 or 14 days of arrival of the delivering vessel/aircraft at a destination port (depending on the agreed Incoterm for delivery). The Customer shall remain liable to PANAFRICAN for the full purchase price of the Goods until such time as PANAFRICAN has notified the Customer of its acceptance of such claim. PANAFRICAN reserves the right to reject claims under this paragraph 7.5 at its sole discretion. If the Customer does not notify PANAFRICAN of short shipment claims, damage to Goods or Goods incorrectly supplied within such time period, the Customer is deemed to have accepted the Goods unconditionally.

7.6 In the event PANAFRICAN accepts a claim for Goods incorrectly supplied under a Contract in accordance with paragraph 7.5, the Customer shall be credited in full for the incorrectly supplied Goods once such Goods have been received by PANAFRICAN at its designated warehouse. Freight costs to the designated warehouse will be covered by PANAFRICAN.

### 8. SERVICES AND COMMISSIONING

8.1 PANAFRICAN shall supply the Services to the Customer in accordance with the Services Specification in all material respects.

8.2 PANAFRICAN reserves the right to amend the Services Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and PANAFRICAN shall notify the Customer in any such event.

8.3 If the Contract provides that PANAFRICAN is Commissioning all or some of the Goods:

8.3.1 for Goods for which PANAFRICAN is the authorised distributor, PANAFRICAN shall carry out Commissioning in accordance with the manufacturer's documented specifications and assembly, inspection and testing criteria; and

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8.3.2 for Goods for which PANAFRICAN is not the authorised distributor, PANAFRICAN will use its reasonable endeavours to assist with Commissioning but to the extent permitted by law no liability is accepted by PANAFRICAN for such Commissioning and the Customer hereby releases PANAFRICAN from any such liability howsoever caused.

8.4 PANAFRICAN shall not be liable for loss resulting from any delay in Commissioning and the Customer hereby releases PANAFRICAN from any such liability howsoever caused.

8.5 Whilst supplying the Services or carrying out the Commissioning, PANAFRICAN shall be entitled to carry out any additional work that it might deem necessary in its sole discretion to overcome a safety hazard without reference to the Customer and the Customer shall be obliged to pay for the additional cost thereof. PANAFRICAN reserves the right to suspend the supply of Services and/or the Commissioning if, in its sole opinion, unsafe operating conditions exist to which PANAFRICAN, its employees, agents, consultants and/or subcontractors may be exposed until such time as the unsafe conditions have been rectified. PANAFRICAN is entitled to a reasonable extension of time for any delays caused by the unsafe conditions.

8.6 PANAFRICAN warrants to the Customer that the Services and/or Commissioning will be provided using reasonable care and skill.

8.7 The Customer shall:

8.7.1 co-operate with PANAFRICAN in all matters relating to the Services and/or Commissioning;

8.7.2 provide PANAFRICAN, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by PANAFRICAN to supply the Services and/or Commissioning, or shall ensure that access is provided in circumstances where the Customer is a contractor on a third party site;

8.7.3 ensure that PANAFRICAN, its employees, agents, consultants and subcontractors, have safe operating conditions to carry out the Services and/or Commissioning and shall remove, or to the extent reasonably possible, mitigate the effect of any unsafe condition notified to the Customer by PANAFRICAN, its employees, agents, consultants or subcontractors;

8.7.4 provide PANAFRICAN with such information as PANAFRICAN may reasonably require in order to supply the Services and/or Commissioning, and ensure that such information is complete and accurate in all material respects;

8.7.5 provide PANAFRICAN with such materials as PANAFRICAN may reasonably require in order to supply the Services and/or Commissioning, including, without limitation, craneage and combustible materials such as fuel, oil and other lubricants;

8.7.6 prepare the Customer's premises for the supply of the Services and/or Commissioning, if they are being carried out at the Customer's premises; and

8.7.7 keep all materials, equipment, documents and other property of

PANAFRICAN at the Customer's premises in safe custody at its own risk, maintain such property in good condition until returned to PANAFRICAN, and not dispose of or use such property other than in accordance with PANAFRICAN's written instructions or authorisation.

8.8 If the Services and/or Commissioning is to be carried out other than at PANAFRICAN's premises:

8.8.1 unless otherwise agreed in the Contract, it shall only be carried out during normal business hours, where practical and safe, and only if the Customer provides reasonable and safe access, space and facilities fit for the purpose, failing which PANAFRICAN may terminate the Contract;

8.8.2 the Customer must obtain all necessary permits, licences and approvals prior to the Services and/or Commissioning being carried out and provide copies of the same to PANAFRICAN upon request; and

8.8.3 PANAFRICAN is not responsible for any hazardous or toxic waste or substances (unless brought to site by PANAFRICAN).

8.9 If the Customer fails to pay for, collect or take delivery of the Goods and/or Services within 3 months of the completion of the service work, PANAFRICAN shall be entitled, without prejudice to its other rights, to terminate all or part of the Contract, and to dispose of the Goods and to charge the Customer the cancellation charge referred to in paragraph 6.1 upon the terms referred to in such paragraph.

### 9. RETENTION OF TITLE

9.1 Unless otherwise agreed in the Contract, the Goods shall remain the sole and absolute property of PANAFRICAN as legal and equitable owner, notwithstanding delivery and the passing of risk in any Goods, until PANAFRICAN has received in full (in cash or cleared funds) all sums due to it under these Terms.

9.2 The Customer acknowledges that it is in possession of Goods solely as bailee for PANAFRICAN until such time as title in the Goods transfers to the Customer in accordance with paragraph 9.1 and until such time, the Purchaser shall not sell, assign or lease the Goods or any interest in them, or permit any charge, pledge, lien or other encumbrance to be created in relation to them.

9.3 PANAFRICAN reserves the immediate right of repossession of any Goods to which PANAFRICAN has retained title hereunder which shall be exercisable at any time after delivery of the Goods.

9.4 For the purposes of exercising its right to re-possess any Goods pursuant to paragraph 9.3, the Customer grants, and shall procure that any third party which holds such Goods shall grant, PANAFRICAN (and/or any of its Affiliates and/or any of their respective officers or duly appointed agents) an irrevocable right and licence to enter upon all or any property where Goods are stored at any time and without notice for the purposes of re-taking possession of such Goods and if necessary, to sever such Goods from the land and to do such things as are necessary or incidental in that regard. Where PANAFRICAN (and/or any of its Affiliates and/or any of

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their respective officers or duly appointed agents) enters any property where Goods are stored to take possession of such Goods and it is not possible to otherwise identify the ownership of the Goods in the possession of the Customer, the Goods will be treated as though they were sold by the Customer in the same sequences the Customer has taken delivery of the Goods. If the quantity of the Goods exceeds the amount owing, PANAFRICAN will be entitled to determine which of the Goods it claims ownership in.

9.5 In respect of any Goods re-possessed in accordance with paragraph 9.4, PANAFRICAN is entitled, at its sole discretion, to keep such Goods, sell such Goods or hold such Goods in safe custody pending payment in full (in cash or cleared funds) of all sums due to it under these Terms. In the event that PANAFRICAN exercises its right to re-possess Goods, the Customer remains bound by its obligations under any Contracts.

9.6 In respect of any act of re-possession by PANAFRICAN (and/or any of its Affiliates and/or any of their respective officers or duly appointed agents) in accordance with paragraph 9.4, PANAFRICAN may recover from the Customer as a debt due and owing without demand:

9.6.1 all costs (including, without limitation, transportation costs and any selling costs such as commissions due to selling agents or other parties) incurred by PANAFRICAN (and/or any of its Affiliates and/or any of their respective officers or duly appointed agents) in re-taking possession of the Goods;

9.6.2 any storage fees paid in respect of the Goods following such re-possession of the Goods;

9.6.3 any costs of renovation, repair or maintenance required to return the Goods to good order and repair following such re-possession of the Goods; and

9.6.4 any other reasonable costs, such as interest charges.

9.7 Following delivery of the Goods, but prior to full payment being made in respect of such Goods, the Customer shall be entitled to process Goods in such fashion as the Customer may wish and or incorporate them in, or with, any other goods, provided that such action does not adversely affect PANAFRICAN's right to repossess such Goods in accordance with paragraph 9.4, and that such action does not affect title to the Goods.

### 10. INSURANCE

10.1 The Customer must keep the Goods insured for the full replacement value with a reputable insurance company against all risks for goods of that kind from the time the risk in the Goods passes to the Customer until the time the title in the Goods passes to the Customer in accordance with paragraph 9.1. The Customer must ensure that PANAFRICAN is noted as first loss payee on the insurance policy in respect of the Goods for this period of time and that in the event of an insurable claim arising, the Customer specifically agrees (and waives any objection) that PANAFRICAN has the right to lodge the claim with the insurance company. The Customer shall provide written evidence of such coverage to PANAFRICAN at

PANAFRICAN's request.

10.2 Until such time as the title in the Goods passes to the Customer, the Customer shall:

10.2.1 pay all insurance premiums as and when they fall due and shall not do or permit any act which may render any required insurances invalid; and

10.2.2 hold the proceeds of any insurance claim relating to the Goods on trust for PANAFRICAN up to the amount it owes PANAFRICAN in respect of those Goods, and must immediately pay that amount to PANAFRICAN.

10.3 If PANAFRICAN is supplying Services or carrying out Commissioning, it shall be entitled to request the Customer to provide evidence that its operations are covered by public liability insurance. If such evidence of insurance coverage is not forthcoming, or is not acceptable to PANAFRICAN acting reasonably, PANAFRICAN shall be entitled to suspend the supply of Services and/or the Commissioning until the Customer has put in place adequate public liability insurance.

### 11. CUSTOMER INDEMNITIES

11.1 The Customer shall indemnify PANAFRICAN (and/or any of its Affiliates and/or any of their respective officers or duly appointed agents) against:

11.1.1 any costs incurred by PANAFRICAN in connection with the Customer's failure to pay the Amount Payable on or before the Due Date in accordance with paragraph 5.2, including, without limitation, legal fees and debt collection agency fees, in each case, on a full indemnity basis;

11.1.2 all loss or damage to the Goods from whatever cause following delivery in accordance with paragraph 7.1 until such time as all sums owing to PANAFRICAN under these Terms have been received by PANAFRICAN (in cash or in cleared funds);

11.1.3 any costs incurred by PANAFRICAN in dealing with hazardous or toxic waste or substances as referred to in paragraph 8.8.3 and any and all actions, claims, suits or demands which may be made against PANAFRICAN by any other person in respect of any property damage or personal injury arising as a result thereof;

11.1.4 any and all actions, claims, suits or demands for damage arising from the entry, severance or removal of Goods in accordance with the exercise of PANAFRICAN's right of re-possession set out in paragraphs 9.3 and 9.4;

11.1.5 any and all actions, claims, suits or demands which may be made against PANAFRICAN by any other person in respect of any matter for which the liability of PANAFRICAN is excluded by paragraph 13.1;

11.1.6 any liability suffered or incurred by PANAFRICAN in connection with the Customer's breach of the Terms.

11.2 The indemnities given by the Customer in these Terms are:

11.2.1 continuing obligations, separate and independent from the Customer's other obligations under the Terms and shall survive termination thereof; and

11.2.2 absolute and unconditional and unaffected by anything that might have the effect of prejudicing, releasing, discharging or affecting in any other

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way the liability of the Customer.

### 12. WARRANTY

12.1 The Parties acknowledge and agree that, no warranty or representation is given by PANAFRICAN as to the performance, condition or fitness for purpose of the Goods and/or Services and that any warranties provided to the Customer are limited to the standard warranties provided by the relevant manufacturer of Goods pursuant to the provisions of paragraph 12.2 or provided by PANAFRICAN under an extended warranty pursuant to the provisions of paragraph 12.3. All warranties, representations, terms, conditions and duties implied by law relating to the fitness, quality and/or adequacy of the Goods and/or Services are excluded to the fullest extent permitted by law. To the extent that PANAFRICAN is unable by law to exclude its liability, PANAFRICAN's obligations under this paragraph 12 shall be limited at PANAFRICAN's option to making good by repair or replacement of any Goods in which any defect appears or in the case of Services the cost of providing the Services again.

12.2 In respect of New Goods, PANAFRICAN shall extend to the Customer the benefit of the relevant manufacturer's standard warranty, subject to any limitations or disclaimers set out in the manufacturer's Standard Terms and Conditions (a copy of which are available on request). Without limiting the generality of the foregoing, the use of spare parts that have not been supplied by the manufacturer may void the manufacturer's standard warranty. PANAFRICAN is the appointed distributor of genuine spare parts within Ghana for the supply of any such items upon request.

12.3 PANAFRICAN may agree with the Customer to sell an extended warranty in respect of Goods, in which case the terms of such warranty shall be agreed separately in writing between the Parties and shall form part of the Contract.

12.4 In the event of a defect occurring in any New Goods supplied by PANAFRICAN, PANAFRICAN will assist the Customer in making a claim under the manufacturer's standard warranty terms and will arrange for an inspection to be carried out where PANAFRICAN, in its sole discretion, considers such claim and inspection to be necessary.

12.5 PANAFRICAN's obligations in paragraphs 12.4 are subject to the following:

12.5.1 the Customer giving PANAFRICAN immediate written notification on discovery of the alleged defect and full details thereof in accordance with paragraph 7.5;

12.5.2 the Goods being defective by reason of faulty workmanship or the use of defective materials;

12.5.3 the Customer returning such Goods (or any part thereof) to PANAFRICAN's nominated delivery address if so required by PANAFRICAN or providing access to PANAFRICAN (and/or any of its Affiliates and/or any of their respective officers or duly appointed agents) to the property where such Goods are stored in order to carry out an inspection. The Customer shall be responsible for all costs associated with the transportation

of such Goods to PANAFRICAN's nominated delivery address. Such returned Goods shall be adequately packed for carriage and shall be clearly marked for identification with the name and address of the Customer; and 12.5.4 the Customer having properly maintained and operated such Goods and complied with all service requirements, manuals and recommendations of PANAFRICAN and/or the manufacturer (where applicable), including having used only genuine spare parts supplied by the authorized distributor for after-sales repair and warranty services.

12.6 For the avoidance of doubt, PANAFRICAN shall not be liable in respect of any defect arising out of or in connection with misuse, neglect, lack of adequate daily operating maintenance, wilful or accidental damage, or normal wear and tear, as determined by PANAFRICAN in its sole discretion. Where any inspection is carried out in accordance with paragraph 12.4 or where any Goods or part thereof is returned to PANAFRICAN but PANAFRICAN in its sole discretion determines that it or the manufacturer is not responsible for any repair or replacement, PANAFRICAN will be entitled to charge for such inspection work and will notify the Customer in writing accordingly. After the expiry of 30 days from the date of such letter of notification, PANAFRICAN may at its sole option either return the Goods to the Customer, or dispose of it and utilise the proceeds of sale in extinction of any debt then due to PANAFRICAN from the Customer.

12.7 The Customer acknowledges that all Used Goods are supplied by PANAFRICAN on an "as is" basis without warranty, and that such sales of such Used Goods are based on the condition of the Goods at the time of sale. The Customer shall inspect all Used Goods prior to their purchase and shall rely solely upon its own assessment of the Used Goods condition, quality, fitness for any purpose and compliance with statutory requirements. 12.8 PANAFRICAN's warranty obligations under these Terms shall exclude all consumable items, including, without limitation, oil, grease, fuel and filters, which will be provided by the Customer or purchased by the Customer at PANAFRICAN's then current selling price.

12.9 Except as otherwise agreed in writing by PANAFRICAN, all work in respect of PANAFRICAN's obligations under this paragraph 12 shall be performed on the basis of paragraph 8 as though such work were deemed Services. Where the Customer requires the work to be performed outside the normal working hours of PANAFRICAN, the Customer will pay any increased labour costs so incurred.

12.10 Defects in either the quality or quantity of any consignment of the Goods shall not be a ground for cancellation of the remainder of the Order or of any other Order for the Goods.

12.11 If any Amount Payable or other amount due under the Contract has not been paid by the Due Date, PANAFRICAN reserves the right to:

12.11.1 refuse to carry out any works required under this paragraph 12 or under any separate warranty provided to the Customer pursuant to paragraph 12.3; and

12.11.2 retain any monies that it may receive from the manufacturer of the

## STANDARD TERMS AND CONDITIONS OF SALE (EQUIPMENT, PARTS AND SERVICES)

relevant Goods pursuant to any claim made in respect of those Goods under the manufacturer's standard warranty referred to in paragraph 12.2 and offset such monies against any sum owing by the Customer to PANAFRICAN.

### 13. LIABILITY

13.1 To the extent permitted by law, neither Party is liable to the other Party for any punitive or pure economic cost, indirect, incidental, special or consequential loss or damage; economic loss; loss of opportunity; loss of production; loss of use; loss of sales; loss of goodwill; loss of profit or anticipated profit; or revenue, in each case whether foreseeable or not, suffered or incurred by the other Party howsoever arising, including out of a breach by the other Party of any Contract, a tortious (including negligent) act or omission, in equity, a breach of a statutory duty or obligation, or otherwise (whether or not such loss or damage was foreseeable by either party).

13.2 To the extent permitted by law, at all times, PANAFRICAN's total aggregate liability in respect of any Contract shall in no circumstances exceed the price payable pursuant to such Contract, except nothing in this paragraph 13.2 or otherwise in these Terms or in any Contract excludes or restricts PANAFRICAN's liability for fraud or any other liability to the extent that the same may not be excluded or limited as a matter of law.

13.3 PANAFRICAN shall not be liable for any failure in the performance of its obligations under these Terms or any Contract, to the extent that such failure results directly from a failure by the Customer to provide PANAFRICAN within a reasonable time, any information reasonably requested by PANAFRICAN for the performance of its obligations hereunder.

13.4 PANAFRICAN shall have no liability resulting from or contributed to by the Customer's continued use of defective Goods after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.

13.5 PANAFRICAN shall have no liability to the Customer to the extent that the Customer is covered by any policy of insurance and the Customer shall ensure that its insurers waive any and all rights of subrogation they may have against PANAFRICAN.

### 14. INTELLECTUAL PROPERTY AND ELECTRONIC DATA

14.1 PANAFRICAN endeavours not to supply Goods and/or Services which infringe rights to patents, trade marks, copyright, registered designs nor any applications to register any of the aforementioned rights or any similar rights (IP Rights).

14.2 Where PANAFRICAN provides advice to the Customer in matters of techniques, or supplies Goods and/or Services for carrying a technique into effect, the tendering of such advice or the supply of such Goods and/or Services carries no guarantee that such a technique will avoid the infringement of IP Rights belonging to a third party as a result of the Customer following the advice tendered by PANAFRICAN or the use of such Goods and/or Services.

14.3 All drawings, catalogues, descriptive and technical specifications, illustrations and other documents published or supplied to the Customer by PANAFRICAN are subject to copyright and may not be reproduced or disclosed to third parties other than the ultimate user of the relevant Goods.

14.4 All IP Rights in and in relation to the Goods and/or Services shall be and remain the sole and exclusive property of PANAFRICAN (or its licensors).

14.5 The Customer grants to PANAFRICAN and its personnel, a non-exclusive and irrevocable licence to enter premises and to access the Goods (including remotely by electronic means), at no cost to PANAFRICAN, to enable PANAFRICAN to perform data retrieval functions for the purpose of monitoring component life, service intervals or machine availability of the Goods. Any physical access to the Goods required by PANAFRICAN will be scheduled wherever reasonably possible to minimise disruption to the Customer's operations. PANAFRICAN may use any of the data it collects or stores for its business purposes including optimising PANAFRICAN's goods and services offerings, parts deliveries; product support, product development and other business improvements. PANAFRICAN may also provide any of this data to any manufacturer of the Goods which may use such data for similar purposes.

### 15. SPECIAL EXPORT CONDITIONS

15.1 All packing cases, crates and other containers are non-returnable except as otherwise stated in the Order.

15.2 The Customer shall be responsible for obtaining at its own expense all export and import licences required in respect of the Goods. In the event of these not being granted PANAFRICAN may forthwith terminate the Contract with immediate effect and shall not be liable for any loss or damage suffered by the Customer arising out of or in connection with such termination. In the event of termination pursuant to this paragraph, PANAFRICAN shall be entitled to charge the Customer the cancellation charge referred to in paragraph 6.1 upon the terms referred to in such paragraph

### 16. FORCE MAJEURE

PANAFRICAN shall not be liable for any loss or damage suffered as a result of a failure by it to supply the Goods and/or Services where such failure arises by reason of riot, civil commotion, war whether declared or not, accident, shortened hours of labour, strikes, lock-outs, mechanical breakdown of facilities, malicious or accidental damage, delays in transport, breakdowns in machinery, restrictions or prohibitions by any government or any semi-government authorities or embargoes, failures by third parties to supply it with raw materials or goods, shortage of electricity or water, storm, flood, fire, pandemic or any other circumstances, whether of the kind above mentioned or not, which are beyond the control of PANAFRICAN (a Force Majeure Event). Upon a Force Majeure Event, PANAFRICAN may, in its sole discretion, terminate any Contracts or suspend any Contracts for up to 3 months by written notice to the Customer.



## STANDARD TERMS AND CONDITIONS OF SALE (EQUIPMENT, PARTS AND SERVICES)

### 17. TERMINATION

17.1 If the Customer shall commit a breach of any Contract, including without limitation, a provision relating to the payment of money, that is not cured by the Customer within 10 days of receipt of a written notice from PANAFRICAN demanding the same, or if the Customer suspends or threatens to suspend payment of its debts or is or becomes insolvent (whether commercially or factually), has any external manager or controller appointed (including any receiver, business rescue practitioner, administrator or liquidator of any kind) or informs any person that it is, presumed to be, insolvent (whether commercially or factually) or if the Customer ceases or threatens to cease to carry on business, or any unfavourable credit report against the Customer is published, or any guarantee or security given to PANAFRICAN in relation to the Customer is revoked or unenforceable, then PANAFRICAN may in its sole discretion, upon written notice to the Customer:

17.1.1 withdraw any purchase or credit facilities which may have been extended to the Customer with immediate effect and require immediate payment of all moneys owed to PANAFRICAN by the Customer, whether or not they were due for payment in the future;

17.1.2 suspend performance or terminate without penalty any Contract then subsisting with immediate effect, in which case any Contract shall be deemed to have been terminated without prejudice to any claim or right PANAFRICAN may otherwise make or exercise;

17.1.3 immediately take all possible action to protect its Goods and intellectual property rights; and/or

17.1.4 recover on a full indemnity basis all costs and losses, including without limitation, all legal fees, associated with such termination action from the Customer.

17.2 In addition, upon termination, the Customer's right to possession of any Goods, the title of which has not yet passed shall cease and PANAFRICAN shall be entitled to repossess the Goods in accordance with paragraph 9.4 of these Terms.

17.3 Termination shall be without prejudice to the accrued rights and liabilities of either Party at the termination date.

17.4 If any Contract is terminated pursuant to this paragraph and the Customer owes PANAFRICAN money, the money becomes payable immediately to PANAFRICAN and bears interest in accordance with paragraph 5.4.1.

### 18. GENERAL PROVISIONS

18.1 If a provision of these Terms is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must to that extent and in that jurisdiction be treated as deleted from these Terms. This does not affect the validity or enforceability of the remaining provisions.

18.2 Nothing in these Terms is intended to exclude, restrict or modify rights which the Customer may have under any legislation to the extent it may not

be excluded, restricted or modified by agreement.

18.3 Except as otherwise expressed in these Terms, no right, power, privilege or remedy conferred is intended to be exclusive of any other right, power, privilege or remedy.

18.4 A Party waives a right under these Terms only if it does so in writing. A Party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of these Terms does not operate a waiver of another breach of the same term or any other term.

18.5 PANAFRICAN may assign, novate, subcontract or otherwise transfer the rights and benefits of any Contract to a third party or otherwise, without the prior written approval of the Customer, to the extent permissible by law. The Customer agrees to provide all assistance reasonably required by PANAFRICAN to give effect to its rights under this paragraph. The Customer may not assign, novate, subcontract or otherwise transfer the rights and benefits of any Contract to a third party or otherwise, without the prior written approval of PANAFRICAN (which PANAFRICAN is entitled to withhold in its absolute discretion).

18.6 No addition to, variation or agreed cancellation of any right under any Contract shall be of any force or effect unless recorded in writing and signed by the Parties.

18.7 Each Party shall, at its own expense, execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to a Contract, and shall use reasonable endeavours to procure that any necessary third party shall do likewise.

18.8 The Customer shall comply at all times with the PANAFRICAN Code of Conduct, a copy of which is available on request, and with all applicable laws, statutes and regulations, in particular those related to anti-bribery and anticorruption including, without limitation, the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act as amended from time to time. Failure to comply with this paragraph shall constitute a material breach which will entitle PANAFRICAN to suspend delivery of any Goods and/or Services, or terminate any Contract immediately.

18.9 Any notice or demand provided for under the Terms shall be in writing, in English and be sufficiently given to the Party to whom it is addressed if it is delivered by hand, e-mail or internationally recognised courier to or for such Party at the address of such Party as set out in the Order. Any notice or demand addressed and delivered in accordance with this paragraph shall be deemed to have been sufficiently given and received on the date on which it was delivered (in the case of delivery by hand or by internationally recognised courier) or sent (in the case of delivery by e-mail).

18.10 The Customer agrees to keep confidential all information of a confidential nature which is disclosed to or obtained by the Customer and relates to the Goods and/or Services supplied. The information remains the property of PANAFRICAN at all times.

18.11 Except as expressly provided in a Contract, no person other than a

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Party shall have any rights to enforce any term of the Contract.

18.12 Any reference in a Contract to the words "in writing" or "written" shall mean any communication consisting of words in any legible or visible form, including e-mails (and attachments thereto) and electronic signatures.

18.13 A Contract and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

18.14 In the event of any dispute, difference, controversy, or claim of any kind whatsoever that arises or occurs between the Parties in relation to anything or matter arising under, out of, or in connection with any Contract, either Party may notify the other in writing identifying the details of the dispute. Within 14 days of notification of a dispute, an executive officer of each Party empowered to resolve the dispute must confer in good faith at least once to resolve the dispute. If the dispute is not resolved within 7 days of the meeting of the executive officers, either Party may refer the dispute to be exclusively and finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (Rules) which Rules are deemed to be incorporated by reference into this paragraph. The arbitration shall be conducted by a tribunal composed of one arbitrator appointed in accordance with the Rules as in effect on the date thereof. The language of the arbitration shall be English and the place and seat of arbitration shall be Dubai, United Arab Emirates. The award or decision of the arbitral tribunal shall be final and binding upon the Parties, and non-appealable. Liability in respect to the legal or other costs incurred by the Parties shall be determined in accordance with the Rules. Notwithstanding the previous provisions of this paragraph, a Party is entitled to seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the arbitral tribunal. Judgment upon the award or decision rendered by the arbitral tribunal may be entered in any court having jurisdiction thereover.