



**WANDERING THRU**  
PHOTOGRAPHIC SAFARIS

**Wandering Thru (Pty) Ltd [Reg 2016/509333/07] – Customer Relationship Terms**  
general terms for the provision of services

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## 1. Introduction

These terms are the general terms of the relationship between us and you. The terms cover any transactions where we provide services to you, in the form of travel, photographic and privately-guided safari and related services. The commercial terms of any transaction will be contained in an order that will incorporate these terms. The order will prevail if there is a conflict of meaning. Nothing in the terms obligates any party to enter into any orders.

## 2. Definitions and interpretation

**Definitions.** In the agreement:

**additional fee** means a charge you must pay us for the supply of any services outside of an order, which charge must be made at our then current standard prices and rates, unless otherwise agreed in writing between us;

**AFSA** means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead);

**agreement** means the agreement between us and you, consisting of the terms and any orders the parties enter into;

**business day** means any day other than a Saturday, a Sunday, or a holiday (including a public or bank holiday) in the jurisdiction where our entity that entered into the relevant order is organised;

**business hours** means our normal business hours on business days;

**contract year** means, in respect of an order, each successive 12 calendar month period during the term of the order, calculated from the effective date;

**effective date** means the date the order is accepted by us;

**existing material** means any materials developed by or for either party independently and outside of the agreement and provided during the course of the agreement;

**fees** means the fees, charges, or purchase consideration that you will pay to us in respect of services we provide under orders;

**intellectual property** means any intellectual property rights that we may have created, acquired, or otherwise have rights in and may, in connection with the performance of our obligations under the agreement, employ, provide, modify, create or otherwise acquire rights in and includes any: copyright; trade marks or service marks; trade names or business names; logos; patents; design rights; rights to domain names and websites or website addresses; confidential information; trade secrets; know-how or techniques; concepts or ideas; methods or methodologies; procedures or processes; or similar rights granted in any jurisdiction, whether registered or unregistered.

**order** means a services order and invoice agreed to by both the parties describing the specific services that we will provide to you;

**personnel** means any representative, including any director, employee, agent, affiliate, consultant, or contractor;

**related** and **related persons** means natural and juristic persons who are connected to one another in the manner contemplated in sections 2 and 3 of the Companies Act 71 of 2008;

**services** means any services we or related persons provide to you, under orders;

**sign** means the handwritten signature, an advanced electronic signature, or an electronic signature that the parties agree to use, of each of our duly authorised representatives;

**signature date** means the date of signature by the party signing last;

**tax** means any:

- tax (including value added tax, income taxes, pay-as-you-earn tax or other taxes levied in any jurisdiction);
- duty (including stamp duty);
- tariff, rate, levy; or
- any other governmental charge or expense payable;

**terms** means the terms, consisting of:

- these customer relationship terms; and
- any other relevant specific terms, policies, disclaimers, rules and notices that the parties agree on, (including any that may be applicable to any specific goods or services);

**third party contractor** means any contractor, supplier, service provider or licensor of a part of the services, which is not a party to the agreement;

**travel date** means the date specified in the order, on which the services are set to be performed;

**we, us, or our** means the vendor or service provider that enters into an order and, if specified in the order, those related to it;

**writing** means the reproduction of information or data in physical form (includes handwritten documents, hard copy printouts and fax transmissions) or any mode of reproducing information or data in electronic form that the parties agree to use (like pdf), but excludes information or data in the form of email;

**you or your** means the customer that enters into an order and those related to it, including any travel companions that will be making use of the services;

**your data** means your data (including information about an identifiable person) that:

- you provide (or any third party on your behalf provides) to us; or
- we generate, process, or supply to you in providing the goods or services; but excludes any derived data that we create for our own internal purposes or which is proprietary or confidential to us or our third party contractors, or which belongs to third parties;

**Definitions in the order.** Words defined (or assigned a meaning) in an order will have that meaning in the terms, unless the context clearly indicates otherwise.

**Interpretation.** All headings are inserted for reference purposes only and must not affect the interpretation of the agreement. Whenever “including” or “include”, or “excluding” or “exclude”, together with specific examples or items follow a term, they will not limit its ambit. Terms other than those defined within the agreement will be given their plain English meaning. References to any enactment will be deemed to include references to the enactment as re-enacted, amended, or extended. A reference to a person includes a natural and juristic person and a reference to a party includes the party’s successors or permitted assigns. Unless otherwise stated in the agreement, when any number of days is prescribed in the agreement the first day will be excluded and the last day included. The rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply. GMT +2 will be used to calculate any times.

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#### 4. Orders

**Capacity.** You represent and warrant that you (and any person who places an order):

- are old enough under applicable law to enter into the agreement;
- are legally capable of concluding any transaction;
- possess the legal right, full power, and authority to enter into the agreement; and
- will submit true, accurate and correct information to us.
- If you are younger than 18 years of age, you warrant that you have the consent of your legal guardian to enter into the agreement or that you have obtained legal status in another manner and will submit written proof to us upon request.

**Invitation to do business.** The marketing of the services by us is merely an invitation to do business or for you to make an offer to procure services. The parties only conclude a valid and binding order when we accept the offer made by you. We may accept or reject any offer. If we do not accept any offer, then we will refund any monies already paid by you.

**Fees.** Despite our best efforts, the stated fees may be incorrect. We will confirm the fees for any goods or services when we accept your offer.

**Time and place.** The parties conclude any agreement between each other at the time when our duly authorised representative accepts the relevant order and at the place where you have your head office. We do not need to communicate the acceptance of the offer to you.

**Orders.** The terms in effect at the time you make an order will govern the order. Each order will create a separate agreement. Despite that, we may consider the breach of any one order to constitute a breach of any or all orders.

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#### 4. Services

**Each party’s general obligations.** You will provide us with any assistance and input as we may reasonably require to enable us to provide the services. We will be responsible for the management and supervision of the performance of the services by our personnel.

**Exclusivity.** During the currency of this agreement, you will only use us for the provision of the services

- 1.1 **Application** - All enquiries, advice, quotations or estimates addressed to, provided by or bookings made and/or all services rendered by or on behalf of Wandering Thru (Pty) Ltd or cc (‘the Company’) are subject

to these terms and conditions ('the Conditions') and the terms and conditions of various third party providers of services and/or goods (i.e. airlines, tour operators, hotels, cruise companies etc.) who the Company requests on your behalf to render services or provide goods to you (see re such suppliers below: 'Third Party Supplier'). Please note that even of the aforesaid liaison with the Company does not culminate in a booking, the Conditions will apply to all enquiries addressed to and/or advice, quotations or estimates provided by or discussed with the Company.\*\*

- 1.2 **Client & Authority** - The person making such enquiries, seeking such advice, requesting such quotations or estimates or making such booking or to whom any service is rendered or goods supplied, is deemed to have read, had explained (where applicable), understand and accepted and agree to be bound by the Conditions and to have the authority to do so on behalf of the person, persons or group or entity in whose name or on whose behalf the enquiry is made or advice sought or estimate or quotation or reservation is requested and/or provided and/or the person to whom the services are rendered and/or the goods supplied (collectively referred to as 'the Client(s)').
- 1.3 **Third Party Suppliers** - The Clients are provided with travel and/or other services and/or goods either by the Company itself or by Third Party Suppliers who it engages as agent for the Client - they include airlines vehicle rental, providers of accommodation, food and beverage and excursions. The **contract in use by the Third Party Suppliers** (which is often constituted by the ticket issued by the them), shall constitute the sole contract between the Third Party Supplier and the Client and any right of recourse the Client may have, will be solely against such Third Party Supplier. The Company will provide the identity and terms and conditions of (or access thereto) all the Third Party Suppliers relevant to the service and/or goods being provided for the Client's booking and it's the Client's responsibility to familiarise itself with such terms and conditions ('the **Third Party Supplier's Conditions**'). Whilst the Company vets and selects the Third Party Suppliers with the utmost care and circumspection, the Company accepts **no liability** for any loss, damage, illness, harm, injury or death which any Client may suffer or claim of whatever nature it may have as a result of any act or omission on the part of or the failure of the Third Party Supplier to fulfill any of its obligations, whether in relation to travel arrangements, accommodation or otherwise unless, in the case of injury or death, it is due to the negligent act or omission of the Company.

With regards to **hotel bookings** please note that hotels and other accommodation properties (Collectively referred to as '**hotels**') may undergo renovations from time to time. Hotels generally take all possible steps to limit disruption and inconvenience to their guests when renovations are taking place. The Company will not entertain complaints or requests for refunds if a hotel is carrying out renovations whilst a guest is resident. If the Company is specifically advised of renovation work in advance by the hotel, this information will be passed on to the Client but it is important to understand that this is subject to change and that the Company may not always be notified.

- 1.4 **Car & Vehicle Hire** – These contracts ('**Car Hire T&C**') are onerous & include absolute, no fault and strict liability provisions. The Car Hire T&C must be read very carefully and anything you don't understand or about which you have any misapprehension must be discussed with the car hire consultant **BEFORE** you sign the Car Hire T&C, especially damage, excesses and mileage. Please note that you will be liable for all traffic fines and toll fees. The Company strongly recommends you check the vehicle thoroughly (interior and exterior) with a representative of the car hire company upon collection and return and ensure that any damage, scratches, faults or shortcomings are noted in writing & signed for. Note that the Car Hire T&C constitute the sole contract between the car hire company and the Client and any right of recourse the Client may have, will be solely against the car hire company in terms of the Car Hire T&C.

Similarly the Company cannot take responsibility in case of car rental vehicle break-down, dirty car rental vehicles, incorrect reading of kilometers travelled, traffic offences, etc.

- 1.5 **Air Tickets** – These tickets are linked to contracts ('**Air T&C**') which are very complex and can entail very strict requirements regarding change, airport and departure taxes and cancellation and baggage provisions and the Client **MUST** read ALL the applicable conditions BEFORE you pay for the ticket. The Client should also take note that if your flight/itinerary consists of more than one flight/coupon/ticket, the Client is not allowed to use such tickets/coupons out of sequence or to 'skip' one (&e.g. opt for train, bus or car transport) as this will VOID the entire balance of the journey/itinerary. 'No-shows' may result in the ticket being voided and/or the Client being charged a cancellation fee. Note that the Air T&C constitute the sole contract between the airline and the Client and any right of recourse the Client may have, will be solely against the airline in terms of the Air T&C. The Client's rights of recourse as a consequence of over-booking are determined by the Consumer Protection Act, Act # 68/2008 ('the CPA'). Loyalty programs are governed by strict rules of which the Client must be aware and retention of boarding passes and other

documentation pertaining to such programs is the sole responsibility of the Client.

**e-TICKETING** - The Client must be ready to show their identity document and possibly their credit card used to make payment for the Booking at the check-in counter of the airline concerned. This will apply to all members of a travelling party and for **EACH MINOR**.

- 1.6 **Booking, Deposit & Reservation** - Once the Client has filled in the travel enquiry form (whether hard copy or on the Company's website), responded to an advertisement verbally or in writing or via e-mail or the Internet or has, without reference to any of the aforesaid, asked for more details (collectively referred to as '**the Enquiry**'), about a particular destination, trip, tour or mode of travel (collectively referred to as '**the Proposed Travel Arrangements**') the Company will prepare and provide the Client with an estimate and proposal (by hand, telefax or e-mail) ('the Estimate or Proposal'). Upon the Client's written confirmation that the facts and information contained in the Estimate is correct and upon acceptance of the Conditions by the Client, the Company will prepare a quotation for the Proposed Travel Arrangements ('**the Quotation**'). A deposit of 35% ('**the Deposit**') of the total estimated value of the Proposed Travel Arrangements ('**the Price**') as specified in the Quotation is required in order to confirm reservations with the Third Party Suppliers ('**the Booking**'), subject to payment of the balance of the Price in due course as specified herein\*. The purpose of the Deposit, other than payment to Third Party Suppliers, is to cover costs and disbursements incurred by the Company and its service fees and in the event of any cancellation as provided for herein, will be forfeited by the Client. The Company will not confirm any reservation if the Deposit isn't received and the Company reserves the right to cancel any reservation that may have been made if the Deposit is not received at all or timeously. Once the Booking has been completed as aforesaid (i.e. Deposit paid), the Client will be supplied with the Invoice document that will contain the final details of your Booking as well as the digital online itinerary ('**the Booking Confirmation Form**') – should no amendment or queries be made by client upon receiving this information, the Company will proceed to confirm the booking with the third party suppliers
1. In the case of air tickets, **full payment** is required as per the applicable fare rule (See '**Air Tickets**' above). If full payment is not received by the applicable date the airline may automatically cancel the reservations.
2. In the case of group bookings, **full payment** is required by each respective individual/company in order to confirm/secure any airline seats/accommodation/car hire or any other group arrangements on offer/discussed. If full payment is not received by the applicable date, the Company will automatically **cancel** any airline seats/accommodation/car hire or any other group arrangements on offer/discussed/confirmed and the Client will have no right of recourse against the Company or any of the Third Party Suppliers.
3. Please note that often more than one itinerary is prepared during the booking process and it is solely the Client's obligation to ensure that all the details in the final version submitted to it is correct.
- 1.7 **Payment & Payment Terms** - The balance of the Price is due not later than six (6) weeks prior to departure [OR on or before the date specified in the Quotation or the Booking Confirmation Form]. The Client undertakes to pay the Company interest at a rate of 5% (five percent) above the prime rate charged by the Company's bank on any payment made after the due date. Late payment may also result in cancellation of the reservation by any of the Third Party Supplier. Credit card payments are subject to due completion of and upon the terms and conditions specified in the Company's credit card authorization form.
- 1.8 **Price**— Note that the Company reserves the right to amend the Price if an unreasonable time lapses between the date the Quotation is submitted to the Client and the date it is completed, signed and returned to the Company and the Deposit paid. Furthermore, Prices are quoted at the ruling daily exchange rate. Until the Company has received payment of the Price in full, it reserves the right to charge any fluctuations to the Client's account and the Client undertakes to pay for any such fluctuation on demand. The onus will be on the Client to check that there have been no changes in the Price prior to making full and final payment. However, once payment of the Price in full is received, the Price is guaranteed (subject to statutory increases such as VAT). Note that airfares are subject to the price and conditions quoted by the airlines and cannot be guaranteed by the Company (**PLEASE NOTE:** This applies especially regarding airport taxes for the entire journey. This also applies to foreign exchange

currency payments such as international hotel bookings, car hire, rail bookings or any other foreign payments that need to be made as well as international bank transfer fees). Should it be a group booking and the group number deviate from the number required for the Booking, the Company reserves the right to re-cost the Price and raise a surcharge. Should any Client refuse to accept and pay such surcharge, the Company reserves the right to cancel the tour and retain any payment made (The Company will be entitled to retain any service fees charged and/or retain the commission earned and/or charge an administration fee). Please note that the Price excludes inter alia airport departure tax and any expenses of a personal nature and gratuities.

**Credit card payment** for local currency may have a **3% fee** and credit card payments for foreign currency will incur in a **4% fee** per transaction

**Please note** that in some cases Third Party Suppliers may nevertheless have a clause requiring passengers to pay an additional amount in the event of **fuel surcharges** or fuel price increases even though full payment has been effected

- 1.9 **Responsibility** - Disclaimer, Waiver and Indemnity All tours are booked and arrangements are made on the express condition that the Client embarks on the tour or journey, activities and any excursions entirely at their own risk, including the journey from their home(s) to the airport and back. The Company, its directors, members, partners, employees and agents ('the Indemnified Parties'), shall not be responsible for, and shall be exempt from all liability in respect of loss (financial or otherwise), damage, accident, injury, death, harm (as defined in the CPA), illness, trauma, delay or inconvenience to any Client (which shall be deemed to include the heirs, executors, administrators or assigns of the Client whether on the tour or journey or not), loss of or damage to their luggage, or other property including any medical expenses, wherever, whenever and however the same may occur and whether or not arising from any act, omission, default, or negligence on the part of any of the Indemnified Parties whatsoever. The Client indemnifies and holds harmless and waives any claims against the Indemnified Parties accordingly. The Indemnified Parties shall further more not be liable for any consequential, economic or indirect loss or damage whatsoever, unless section 61 of the CPA applies.
- 1.10 **Insurance and Travel Arrangements** - Every Client (and all members of a group or tour party) is obliged to have comprehensive insurance cover and written, documentary proof of such cover must be submitted to the Company. Such cover must include amongst others cancellation due to death, illness, accident or injury personal accident and personal liability, loss of or damage to baggage and sports equipment (Note that is not an exhaustive list). The Company will not be responsible or liable if the Client fails to take adequate insurance cover or at all. It shall not be obligatory upon the Company to effect insurance for the Client except upon **detailed instructions** given in writing and all insurance effected by the Company pursuant to such instruction will be subject to such exceptions and conditions as may be imposed by the insurance company or underwriters accepting the risk, and the Company shall not be obliged to obtain separate cover for any risks so excluded. Should the insurers dispute their liability for any reason, the Client will have recourse against the insurers only. Once the insurance has been confirmed and paid for, the Client will be issued with the policy document of the insurer. It is a complex document, which must be read BEFORE YOU initiate your travel so that you can address any queries you may have to your broker or the insurer PRIOR to your departure.

Please note that various **credit card companies** offer limited levels of travel insurance, which may not provide sufficient cover for international travel. Kindly check with the respective credit card companies in order to obtain the specific details of the cover.

- 1.11 **Travel Documents** - Documents (vouchers, itineraries etc) are only prepared and released on **receipt of payment** of Price in full. Upon receipt of your travel documents. **PLEASE CHECK that ALL** the detail therein are correct BEFORE departure.
- 1.12 **Passports, Visas and Health** - It is the solely and entirely the **Client's duty** to ensure that all **passports and visas** are current, valid, obtained on time, and will be valid for six (6) months after return to his/her/their home country and that any **vaccinations, inoculations, prophylactic** (e.g. for malaria) and the like, where required, have been obtained. Please check the requirements with a medical practitioner who is well versed with the prevailing conditions and requirements of the country(ies) you intend visiting. If the Company assists the Client in any way, such assistance will be in the Company's sole discretion and

the Client acknowledges that in doing so, the Company **is not assuming any obligation or liability** and the Client indemnifies the Company against any consequences of such assistance. It is the Client's duty to familiarize him/herself with the inherent dangers of and mental and/or physical challenges the journey may entail and the Client must accordingly be in an adequate mental and physical condition for the Proposed Travel Arrangements.

**Please note that** All visitors to South Africa and all Clients who are travelling from RSA to another country are required to have a minimum of three (3) blank pages in their passport excluding the front and back cover to for visa purposes – However in each case a further enquiry should be addressed to the consulate or embassy of the relevant countries being visited. If there is insufficient space in the passport, entry will be denied and the Client is likely to be detained pending return to their country of origin. Please ensure that all passports are renewed timeously. The Client must ensure that the details supplied to the Company mirror those details shown on their passport for international travel and ID documents for local travel. As a guideline, passports should be valid for 6 (six) months after your scheduled return to South Africa. Non-South African passport holders may also be required to have re-entry documentation and it is entirely the Client's duty to ensure that such documentation is in order before departure.

Please note that a visa does not guarantee entry to any given country at point of entry and boarding of an aircraft may be denied at any point even if you have a valid visa. Furthermore caution should be taken when the countries of transit or your final destination issue visas on arrival. These must not be taken for granted and ensure that all details are obtained from the relevant embassy or consulate well in advance of your departure.

Should you travel while pregnant, please contact your doctor for a "fit to travel" letter, which is required by some service providers. Please advise the Company how far your pregnancy is when traveling, as some service providers have restrictions.

**ABRIDGED BIRTH CERTIFICATES FOR CHILDREN - PLEASE CONSULT THE DEPARTMENT OF HOME AFFAIRS OR EMBASSY OR CONSULATE IN YOUR COUNTRY ABOUT THE LATEST REQUIREMENTS – BROADLY SPEAKING THE FOLLOWING IS REQUIRED WHEN A MINOR TRAVELS WITH HIS/HER PARENTS/GUARDIAN:**

1. The minor must have an unabridged birth certificate
2. In the case of foreign countries that do not issue unabridged birth certificates, a letter to this effect issued by the competent authority of the foreign country should be produced.
3. All documents must be original or copies certified as a true copy of the original by a Commissioner of Oaths or the equivalent commissioning authority should Commissioners of Oaths not be a practice in the country concerned.
4. All documents not in English should be accompanied by a sworn translation issued by the competent authority in the country concerned.

**MALARIA AND OTHER TROPICAL DISEASES: WARNING**

Certain parts covered by your itinerary may present is a high-risk of malaria and other tropical diseases. The Company strongly recommends that the necessary precautions be taken in this regard and recommend that you check with your medical practitioner before departure or a medical practitioner well versed in tropical diseases immediately upon your arrival in Africa or any other tropical or sub-tropical destination. If you have not done so prior to departure, it is imperative you do so upon your return.

Certain areas also require **Yellow Fever Vaccinations** of which the certificate must be carried and produced when required. Yellow Fever Vaccinations last for up to 10 (Ten) years and inoculation is required at least 2 (Two) weeks before your departure from country of origin.

**PLEASE NOTE:** The South African government as a rule does not issue cautionary travel advice regarding foreign countries – where the countries you are travelling to issue such a cautionary and it comes to the Company's attention it will convey it and/or provide an appropriate link to you. However it is **your duty** to check your destination on the Internet for any such cautionary before you travel as the state of the country in terms of not only health but also security (such as recent terrorist attacks) can change overnight.

Please note that various **credit card companies** offer limited levels of travel insurance, which may not provide sufficient cover for international travel. Kindly check with the respective credit card companies in order to obtain the specific details of the cover.

**5. Intellectual property**

We will retain all rights, title and interest in and to any works created by our personnel under an order, including copyright in any photographs taken. Similarly, you will retain all rights, title and interest in and to any works created by you during the services described in an order.

1. **Copyright** -The Conditions and any intellectual property and specifically copyright therein and any proposals, presentations, estimates, quotes and itineraries provided by the Company is and shall remain the sole and exclusive property of the Company. The Client furthermore undertakes not to circumvent the Company and to make any approaches to or enter into any arrangements for any concept similar in part or as a whole to that contained in any of the proposals, presentations, estimates, quotes and itineraries provided by the Company with any of the Third Party Suppliers or any other service providers or venues for a period of 1 (One) year from the date of the Booking and/or the submission of any proposals, presentations, estimates, quotes and itineraries provided by the Company.
2. **Photography& Videos** -Whilst the Company acknowledges the Client's right of freedom to take photographs in general, please note that the following conditions apply to any photography during any tour and excursions with or arranged by the Company whether during the tour or excursion or thereafter and these rules will be strictly enforced. By the same token Clients are deemed to indemnify the Company against any consequences, claims and legal costs (on an attorney and own client scale) resulting from any breach of whatsoever nature of this clause:

The copyright and ownership in the photograph ('photo') will remain vested in the person who took the photo ('the photographer'), unless a person ('the Subject') asked for the photo to be taken and made an arrangement to the contrary with the photographer.

1. However once the photographer has posted any material on the Company website or any form of social media, that entitles the Company or any third party to disseminate it.
2. If the material is to be used commercially e.g. sold or used to launch an advertising campaign, then the written permission of the Subject is required
3. The Company supports the principle of fair use and factors that will have a bearing are the purpose (e.g. non-profit); nature of use; size e.g. thumbnail
4. Whilst you are entitled to take photos of individuals in public areas, many public areas e.g. shopping centers, resorts and some of the places you may visit may seem to be in the public domain but is in fact privately owned and thus subject to the rules prescribed by the owner of which you should be aware.
5. If the location where the photo is being taken is of such a nature that it is reasonable to presume privacy, e.g. a bathroom, then the Client may not take a photo of the Subject at all. This principle would also apply if the location is e.g. a private game lodge which focuses on upper end clients and celebrities or where the surrounds may not be evidently private - these persons choose such venues for reasons of privacy and even an innocent photo of a staff member posing with a celebrity may be of such a private nature that both the photographer or the staff member requesting the photo is advised to limit the usage to personal purposes and not disseminate it e.g. via social media.
6. Use of the photo must not be of such a nature that e.g. it misrepresents the Subject, the setting or surrounds
7. The Company reserves the right take photos of you and your party and to use such photos and any other photos posted on social media on its website and for promotional purposes. If you wish to object to such use, please advise the Company in writing prior to arrival
8. Any photos or videos taken by private guides taken during privately guided safaris is the sole property of the guide

## 6. Entire Contract

The **Conditions** (together with all enquiries, advice, quotations or estimates addressed to, provided by or bookings made and indemnities signed and proposals, presentations and itineraries prepared by the Company, the Company's Privacy Policy and any annexures) constitute collectively the entire terms of the relationship between the parties. There exist no other terms, conditions, warranties, representations, guarantees, promises, undertaking or inducements of any nature whatsoever regulating the relationship and the Client acknowledges that he/she has not relied on any matter or thing stated or presented on behalf of or purportedly on behalf of the Company or otherwise

that is not included herein, be it verbal or in writing. The contra proferentem rule will not apply to the interpretation of the Conditions. The Company reserves the right to revise these conditions from time to time - each revision will be dated and posted on its website.

## 7. Private Guides & Tour Leaders

The Company is aware of the preference by and choice of the Client for/of certain a specific private guide. Whilst the Company uses its best endeavors to engage the Client's preferred and choice of guide, there may be circumstances beyond the control of the Company that prevent such guide to accompany the Client. Under such circumstances the Company use it best endeavors to engage on behalf of the Client an alternative guide but nevertheless of the same standing and caliber as the guide originally preferred and chosen by the Client. Any such eventuality **does not entitle the Client to a refund of any nature and of the Client nevertheless cancels, a 100% cancellation fee will be applicable.**

## 8. Cancellation

In the event of Client cancelling their reservations (which must be done by confirmed e-mail or written communication), the Company shall have the right to either claim the Deposit or to retain the Deposit and claim damages suffered by the Company.

The Company **reserves the right to cancel** any tour before departure, in which event the entire payment will be refunded to the Client without any further obligation on the part of the Company or right of recourse by the Client. The maximum cancellation fee, which may be imposed in the event of a Client cancelling, is as follows (Clients should also refer to the cancellation provisions contained in the Third Party Supplier's Conditions or website. Third Party Suppliers may charge cancellation fees over and above those stated below):

**Cancellation.** If you cancel an order, we may charge you a cancellation fee as described in the table below:

Cancellation period	Cancellation fee
More than 8 weeks before travel date	35% of total fees
Less than 8 weeks before travel date	50% of total fees
Less than 6 weeks before travel date	100% of total fees

**Your failure.** If you fail to comply with your obligations for a period in excess of five calendar days after receiving a written request from us for you to do so, the failure will constitute a material breach of this order. In addition to any remedies we may have arising out of the breach, if you fail to comply with our obligations within the notice period of five calendar days, we will be excused from meeting the service levels for as long as you fail to comply with your obligations.

**Coach & Air Charter.** Please note that the flying services and coach transfers are sub-contracted to **independent Third Party Suppliers**. They are entirely and exclusively responsible for this portion of the itinerary. The Company will not be liable for any additional flying/transfers outside of the quoted itinerary. This will be for the Client's account.

**Destination Selections.** The Client acknowledges that it has selected the itinerary and destination(s) constituting the Booking based on information gleaned from brochures and/or the Internet. It also acknowledges that certain of such brochures and/or the Internet have been compiled and are managed and up-dated by the Third Party Suppliers over which the Company has no control. Accordingly the Company cannot and does not guarantee that the itinerary and/or any destinations will comply in whole or in part with such brochure and/or the Internet. Any right of recourse in that regard will be against the Third Party Supplier.

**Law, Jurisdiction, Domicilium and Legal Fees.** South African **law and the jurisdiction** of South African courts will govern the Conditions and the relationship between the Client and the Company. The Company shall be entitled to institute any legal proceedings arising out of or in connection with this contract in any **Magistrates Court** having jurisdiction in terms of Section 28 of the Magistrates Court Act no. 32/1944 as amended, notwithstanding that the amount in issue may exceed the limits of such jurisdiction. The parties choose their respective domiciliumcitandi et executandi as reflecting in the Booking Form. The Client will be liable for all legal fees on an attorney and own client scale in the event that the Company has to take any legal steps of any nature whatsoever pertaining to the Conditions and/or arising from the Booking.

**Conduct.** The Client agrees that he/she and any members of its tour party will at all times comply with the Company's or others' requirements and instructions in regard to his/her conduct and he/she will not in any way constitute a hindrance to any Third Party Supplier, other passenger or person on the tour, mode of conveyance, at any place of

accommodation, entertainment or where meals and/or drinks are served. The Client indemnifies and holds harmless the Company against damages suffered and/or costs incurred by the Company and/or any third party as a result of a breach of this clause.

**Special Requests.** Client, who has **special requests**, must specify such requests to the Company in the Enquiry. Whilst the Company will use its best endeavors to accommodate such requests, it does not guarantee that it will.

**Amendments.** No amendment, cancellation or waiver of any term or right referred to herein shall be valid or binding unless reduced to writing and signed by both the Client and a duly authorised representative of the Company.

**Refunds.** Refunds will be only be considered in special circumstances in the sole and unfettered discretion of the Company in which event and administration fee will apply. Refunds by the Third Party Suppliers will be exclusively and solely subject to their terms and conditions.

**Foreign Exchange Regulation Compliance.** This is the Client's exclusive duty. This will apply especially when the Client instructs the Company to make and pay for travel arrangements on the Internet. It is the responsibility of each individual Client to ensure that he/she does not exceed the R1 (one) million per calendar year (Please note this amount is stipulated by the SA Reserve Bank from time to time – it is the Client's duty when booking to check with its foreign exchange provider). Individual's Single Discretionary Allowance: It is imperative that the Clients are able to show any customs official proof that they purchased the foreign exchange they are carrying, failing which it may be confiscated.

## 9. Your data

**Your data.** We are not responsible for any of your data stored on our system.

Privacy and protection of personal information.

- **Legal obligations.** We are responsible for complying with our obligations and you are responsible for complying with your obligations under applicable laws governing your data. We both acknowledge that we are not investigating the steps the other is taking to comply with any applicable privacy and protection of personal information laws.
- **Responsible party.** You remain the responsible party for determining the purpose and means of our processing of your data, including that processing will not place us in breach of any laws.
- **Trans-border flows of your data.** You consent to us transferring your data across a country border to enable us to comply with our obligations under the agreement. You are solely responsible for determining that any transfer of your data across a country border complies with the applicable laws.
- **Indemnity.** You agree to indemnify, defend, and hold us harmless (and those related to us and our personnel, co-branders or other partners) from and against any claim, demand, loss, damage, cost, or liability (including legal costs) arising out of or relating to you failing to comply with your obligations under this clause. If permissible under applicable law, legal costs will be on an attorney and own client basis.

**Access.** On a party's reasonable written request, the other party will provide the requesting party with the information that it has regarding your data and its processing that is necessary to enable the requesting party to comply with its obligations under this clause and the applicable laws. The requesting party will reimburse the other party for its reasonable charges for its assistance.

**Preservation of integrity of your data.** Both of us will take reasonable precautions (having regard to the nature of each of our obligations under the agreement), to preserve the integrity of your data and prevent any unauthorised access, corruption or loss of your data.

**Records.** You agree that our records are prima facie evidence of the services provided to you.

**Return of data.** On termination of any order, each party will return to the other party in the form in which it was received all of the other party's data or information provided to the party for the purpose of the performance of the relevant order.

## 10. Confidential Information

Subject to statutory constraints or compliance with an order of court, the Company undertakes to deal with all Client information of a personal nature on a strictly confidential basis. Furthermore, as far as the Client's personal information and special personal information is concerned, the Company will comply with all provisions of the applicable privacy legislation such as the Protection of Personal Information Act, Act 4 of 2013 [*'POPIA'*] and, in the case of residents of the European Community (*'the EC'*), the General Data Protection Regulations of 2018 (*'the GDPR'*) as detailed in the

Company's Privacy Policy which is incorporated herein by reference and which you are deemed to have read, understand and agree to be bound by.

#### 11. Limitation of Liability

- **Direct damages limited.** To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, our maximum liability to you for direct damages for anything giving rise to any legal action will be an amount equal to the total fees already paid by you to us for the goods or services related to the claim. The aggregate amounts for all claims will not be greater than the maximum amount
- **Indirect damages excluded.** To the extent permitted by applicable law, in no event will we (or our personnel) be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits or loss of goodwill) arising from the agreement.
- **Exclusions.** The limitation contained in this clause will not apply to any breach by a party of the other party's proprietary or confidential information or intellectual property or damages arising from a party's gross negligence.
- **We are not liable for your default.** We will not be liable for any loss or damage suffered by you arising out of or in connection with any breach of the agreement by you or any act, misrepresentation, error or omission made by or on behalf of you or your personnel.
- **Other goods or services.** We are not liable for any other deliverable, including website, goods, or service provided by any third party.

#### 12. Breach

If a party:

- does not fix any breach of this agreement (failure to comply with it) within seven days of receiving written notice from the other party to do so;
- breaches this agreement materially twice or more in any six month period;
- is insolvent (bankrupt), or has some legal disability, for example, if they are placed under administration;
- takes steps to deregister itself (close down) or is deregistered;
- makes any settlement or arrangement with its creditors; or
- fails to pay a court order against it (does not satisfy a writ of execution) for more than one million rand, within 21 days;
- then the other party may, without prejudice to any of its rights:
- claim specific performance of this agreement (make the party comply with this agreement); or
- immediately cancel this agreement in writing; and
- claim damages from the other party, including any claim for any fees already due.

#### 13. Termination

**Termination for good cause.** We may immediately terminate this agreement at any time by giving you notice in writing if:

1. we discontinue the services;
2. we believe providing the services could create an economic or technical burden or material security risk for us;
3. termination is necessitated by us having to comply with any applicable law or requests of governmental entities; or
4. we determine that your use of a service or the provision of any services to you has become impractical or unfeasible for any legal or regulatory reason.
5. **Survival.** The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

**Effect of termination.** Amounts due to us become due and payable. On termination, cancellation, or expiry this agreement, all amounts due to us for services rendered before termination will become due and payable even if

we have not yet invoiced them. You may not withhold the amounts for any reason, unless the arbitrator directs otherwise.

**Resolving disputes.** Any and all dispute arising out of or in connection with the Conditions including any question regarding its existence, validity or termination and/or advice, requests, quotations, estimates, bookings made or services rendered or goods supplied, shall be dealt with as follows:

- Firstly the parties will meet within 5 (five) working days of the dispute arising in an attempt to resolve the matter amicably. Failing such amicable resolution of the dispute within 5 (five) days of their meeting, they will attempt to resolve the matter by mediation – the mediator will be an independent third party mutually agreed upon and, failing such mutual agreement, a party appointed as a mediator by the Arbitration Foundation of South Africa ('AFSA'), which mediator must be appointed within 5 (five) days of their failing to resolve the matter amicably and the mediation itself must take place with a further 5 (five) days from the date the mediator is appointed. Failing such amicable resolution of the dispute by the intervention of a mediator, the dispute must be referred to arbitration in Johannesburg within two (two) days of the failure to resolve the dispute by the intervention of a mediator, which referral must be delivered in writing to and be conducted in terms of the rules of AFSA for the time being in force which rules are deemed to be incorporated by reference into this clause. The tribunal shall consist of one (1) arbitrator to be appointed pursuant to the AFSA Rules. The arbitrator's decision shall be final and binding upon the parties and shall provide the sole and exclusive remedies of the parties. The judgment upon the award so rendered may be entered in the record of any court having jurisdiction or application may be made to such court for a judicial acceptance of the award or orders of enforcement. The commencement of any arbitration proceedings under this Clause shall in no way affect the continual performance of the obligations relates to the subject matter of such proceedings. All arbitration proceedings shall be in the English Language.
- Notwithstanding the provisions of this clause, either party may bring an urgent application to any court that has jurisdiction if circumstances arise that merit such an application

#### 14. Force Majeure

The parties agree that one or more of the following events, circumstances or occurrences will constitute prima facie force majeure for the purposes of the Conditions, subject to the qualifying requirements:

- Acts of God and casus fortuitous: physical, natural causes which cannot be foreseen or prevented and which without limiting the generality of the aforesaid includes tornadoes, death, extraordinary high tides, tidal waves violent winds, storms, floods, earthquakes, earth tremors, volcanic eruption, hurricanes, tornados, typhoons, cyclones, landslides, subsidence, lightning strikes, fire and other natural disasters;
- Industrial action such as strikes and lockouts, riots, protests and protest action, whether of a political nature or not;
- War, sabotage, revolution, terrorism, civil commotion, riots, insurrection, invasion, blockade or boycott;
- Epidemic, pandemic or the outbreak any other life and/or health threatening diseases, whether infectious, contagious or not, or events such as the spillage of dangerous contaminants or severe air, water, soil or substance pollution;
- Any other event that is due to an irresistible force, unavoidable and external accident;
- Breakdown of public services and amenities;
- National and/or regional border closures and international, national and/or regional or transport travel or transport bans or restrictions whether taken and/or implemented by the government of any country included in the client's travel itinerary;
- The geographic location, origin and/or epicenter of the Event is irrelevant as the only yardstick is the impact on the contractual obligations of the parties;

#### Qualifying requirements

The parties agree that the above prima facie force majeure events (**'the Event'**) will only qualify as such if all of the following conditions are met:

- The party invoking force majeure (**'the Force Majeure Party'** - 'FMP') must immediately advise the other party (**'the Force Majeure Recipient'** - 'FMR') in writing;
- The Event must not be due to the fault, negligence or breach of contract on the part of the FMP;
- The Event must destroy the subject matter of the contract and means of performance to such an extent that performance becomes permanently impossible and **NOT** simply difficult, burdensome or economically onerous to carry out;
- The FMP uses and has used due diligence and its best commercially reasonable endeavours to overcome and/or remove and/or alleviate and/or mitigate the Event;
- The FMP must mitigate its own damages;
- The FMP must take all reasonable steps to avoid non-performance;

- Any steps taken by any country's government must be as a result of the Event which results in and meets any one or more of the above Qualifying Requirements;
- The Event must not be of a temporary nature but if it is anticipated to endure for an unreasonably long period, it will be regarded as permanent

### Remedies

If the parties are in disagreement about the Definition or the Qualifying Requirements, the parties will apply the Dispute Resolution clause of the Conditions;

1. If any one or more of the Qualifying Requirements are not met\*\*, the FMP will have the option to agree a postponement with the FMR and the contract will be performed at the postponed date or the FMP can on its sole discretion cancel the contract and the cancellation provisions set out above will apply. The exercise of the option to cancel will be at the discretion of the FMP and regardless of the views of the FMR – the test is an objective one\*\*.
2. If the parties are in agreement that the Qualifying Requirements have been met, then parties will in the first instance use their best endeavours to agree on the postponement of performance of the contract and failing consensus in that regard, the FMR will use its best endeavours to reimburse the FMP all monies received from it and paid to such Third Party Service Providers which it manages to recover less irrecoverable disbursements and a reasonable management, commission and service fees.

### Assignment and Subcontracting

**No assignment.** No party may delegate its duties under this agreement or assign its rights under this agreement, in whole or in part.

**Exception.** Despite this clause, we may cede and assign all rights and obligations under this agreement to a related person without your prior written consent, provided that we notify you within a reasonable time of the event occurring.

**Our third party contractors.** We may sub-contract or delegate our obligations under this agreement to third party contractors. No one may require us to disclose the terms (including payment terms) of any sub-contract entered into with respect to our obligations under this agreement

### 15. General

**Entire agreement.** The agreement is the entire agreement between the parties on the subject.

**Changes to the terms.** No change to these this agreement will be valid unless in writing and signed by the parties.

**Waiver (giving up of rights).** Any favour we may allow you will not affect or substitute any of our rights against you.

**Severability.** If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this agreement if it does not change its purpose.

**Governing law.** South African law governs this agreement.

**Jurisdiction.** You consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that we may bring against you in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.

**Non-exclusivity.** We may provide any goods or services to any other person or entity. We may exploit our intellectual property subject to our confidentiality obligations.

**Costs.** Each party is responsible for its own costs of drafting and negotiating this agreement.

**Publicity.** A party will not make any announcement or statement to the press about this agreement, without first getting written permission from the other party.