

## **BOOKING TERMS & CONDITIONS (“T’s and C’s”)**

1. BOOKINGS AND APPLICATION OF THESE T’S AND C’S
  - 1.1. The Client, in signing and submitting the Booking Form to the Tour Operator, thereby represents and warrants to the Tour Operator that, with effect from the Signature Date and every day thereafter until the expiration or earlier cancellation of the Tour Package, he/she is authorised to: (i) sign the Booking Form; and (ii) accept these T’s and C’s both in relation to himself/herself and on behalf of each of the other persons referred to in the Booking Form (if any) and (iii) the persons referred to in the Booking Form have secured the necessary passports, visas and inoculations for the booking, and wish to proceed with the itinerary reflected in the Booking Form and (iv) the persons referred to in the Booking Form are not residents of South Africa and the tour package is or will be arranged prior to their arrival in South Africa.
  - 1.2. In signing and submitting a Booking Form, the Client thereby also:
    - 1.2.1. acknowledges that the Client was provided with full information in relation to:
      - 1.2.1.1. the Tour Operator (being its full name, licence or registration number (if any), and its VAT registration number (if any) ;
      - 1.2.1.2. the address of the Tour Operator and/or the address of its supplier’s (if any) physical business premises, and related contact details;
      - 1.2.1.3. the address/es of the premises at which, or from which, the Tour Operator’s services will be supplied as applicable;
      - 1.2.1.4. the salient details of the Tour Package and its features including, by way of example:
        - 1.2.1.4.1. whether the Tour Package is in fact eligible for booking;
        - 1.2.1.4.2. modes of transportation; and
        - 1.2.1.4.3. places of accommodation and their nature;
      - 1.2.1.5. the Total Tour Price, which includes Applicable Taxes and, where applicable, the Management Fee; and
      - 1.2.1.6. the currency in which amounts under these T’s and C’s are payable;
    - 1.2.2. acknowledges that the Client read and understood these T’s and C’s; and
    - 1.2.3. makes an offer to contract with the Tour Operator in relation to the Tour Package on the terms detailed in these T’s And C’s.
  - 1.3. Subject to clause 3.1, upon the Tour Operator accepting an offer from the Client as contemplated in clause 1.2.3 (by way of the issue of a Booking Confirmation to the Client), a contract shall come into existence and bind the Parties on and with effect from the date of receipt (or deemed receipt) of the Booking Confirmation by the Client (the “**Booking Acceptance Date**”), all on the terms and conditions contained in the Booking Form as read conjunctively with these T’s and C’s.
2. APPLICATION OF THE CONSUMER PROTECTION ACT (CPA)
  - 2.1. To the extent that these T’s and C’s are regulated by the CPA, the Parties agree and acknowledge that it is not intended that any of these T’s and C’s should contravene any provision of the CPA. All the provisions hereof must be treated as being qualified only to the extent necessary, to ensure that the provisions of the CPA are complied with at all times.
3. TOUR OPERATOR’S RIGHTS AND RESPONSIBILITIES SPECIFICALLY

The Tour Operator:

  - 3.1. will as soon as practicable after receipt by it of the Booking Form (as signed and submitted by the Client) and deposit, proceed to plan the Tour Package, including making the necessary reservations and compiling the



itinerary. Confirmation to the Client, together with the Proforma Deposit Invoice and Tour Itinerary and all relevant details will be sent to the Client.

- 3.2. will stipulate in the Tour Itinerary (to the extent applicable) all the relevant details in relation to international and/or domestic airfare/s, accommodation, room/s and specification, hotel and/or airport transfers, meals and/or beverages included, and other incidental specifications of the Tour Package. The Client usually takes care of their airfare arrangements directly with the relevant airlines;
- 3.3. will issue the Proforma Second (which could be the final) Invoice to the Client no later than the date which is 60 (sixty) days prior to the Tour Start Date;
- 3.4. will issue the Final Invoice (if applicable) to the Client as soon as practicably possible after the date of receipt by the Client of the Proforma Second Invoice, but in any event by no later than the date which is 10 (ten) days prior to the Tour Start Date;
- 3.5. is entitled to make Tour Package Amendments and/or cancel the Tour Package (in part or the whole), at any time, to which the Client hereby agrees, provided that:
  - 3.5.1. the Tour Operator will use its commercially reasonable endeavours to avoid having to make such Tour Package Amendments and/or cancel the Tour Package;
  - 3.5.2. any such Tour Package Amendment or cancellation must be due to unforeseen circumstances, and not attributable to the wilful misconduct of the Tour Operator;
  - 3.5.3. in the event that the Tour Operator elects to cancel the Tour Package, it shall advise the Client thereof on written notice on or within 72 (seventy two) hours of having made such election (it being recorded that the date of cancellation in this regard shall be deemed to be the date on which the said written notice of cancellation is received by the Client). The Tour Operator will then refund the Client, by way of electronic funds transfer into the Client's nominated bank account, such aggregate portion of the Aggregate Tour Fee as was paid by the Client to the Tour Operator, and not otherwise forfeited to the Tour Operator (whether as a cancellation fee or otherwise), as soon as practicably possible after the relevant date of cancellation. No Party shall have any other claim of whatsoever nature against the other in such circumstances;
- 3.6. will use its commercially reasonable endeavours to secure/procure/enable the Client's special requests as stipulated in the Booking Form (if any) or advise the Client that such special requests cannot be accommodated. The Tour Operator will only undertake to procure those special requests as are expressly accepted by the Tour Operator in the Booking Confirmation. All special requests accepted by the Tour Operator will be subject to additional third-party charges to the Client as stipulated in the Final Invoice. **The Client acknowledges and agrees that all special requirements or requests indicated in a Booking Form cannot be guaranteed by the Tour Operator. If and to the extent that the Tour Operator is unable to arrange/procure the relevant special requests, the Client hereby agrees that he/she will have no claim of any nature against the Tour Operator;**
- 3.7. will on request, provide to the Client written proof of any insurance policies taken out in the Tour Operator's name;
4. QUOTED TOUR PRICE, PAYMENT OF TOUR FEES AND INCIDENTAL MATTERS
  - 4.1. Subject to: (i) at all times the provisions of clause 4.2; and to (ii) any additional third party charges to the Client in relation to special request/s as contemplated in clause 3.6, in consideration for planning and/or arranging and/or facilitating the Tour Package, the Client will pay the Total Tour Price (which includes the Management Fee), and having regard to each of the Proforma Deposit Invoice, Proforma Second Invoice and Final Invoice) to the Tour Operator as follows:
    - 4.1.1. as regards the Deposit, the Client shall pay the full amount thereof to the Tour Operator on or within 4 (four) days after the Booking Acceptance Date. It is agreed that:
      - 4.1.1.1. **the Deposit is not refundable to the Client;** and
      - 4.1.1.2. simultaneously with payment of the Deposit, the Client shall, if applicable, pay the full amount of any international and/or domestic airfares (as stipulated in the Proforma Deposit Invoice, if any) to the Tour Operator;

- 4.1.2. as regards the Second Tour Fee, the Client shall pay the full amount thereof to the Tour Operator on or within 4 (four) days after the date of receipt (or deemed receipt) by the Client of the Proforma Second Invoice; and
- 4.1.3. as regards the Final Tour Fee, the Client shall pay the full amount thereof to the Tour Operator on or within 4 (four) days after the date of receipt (or deemed receipt) by the Client of the Final Invoice, provided that, in the event that the Booking Acceptance Date is within 30 (thirty) days of the Tour Start Date, then the Client will pay the Total Tour Price to the Tour Operator immediately upon the said Booking Acceptance Date. All such payments shall be made into the bank account of the Tour Operator as indicated in the relevant invoice, or by way of Tour Operators' Pay Genius or Exchange4Free payment platforms.
- 4.2. **The Client agrees that the due dates for payment contemplated in clause 4.1 are subject to a supplier (of the Tour Operator) requiring earlier/later payment, and/or payments of seasonal deposits. In any such event, the Tour Operator will notify the Client of such fluctuation in writing, on or within 5 (five) days after the Tour Operator has been notified thereof by the said supplier, and the applicable due date/s for payment shall be deemed to have been amended accordingly. The Client will have no claim of whatsoever nature against the Tour Operator in such circumstances.**
- 4.3. Unless otherwise agreed in writing by the Parties, all amounts payable under these T's and C's shall be payable in the currency of payment as indicated in the relevant invoice (usually ZAR) issued to the Client.
- 4.4. **Notwithstanding anything to the contrary contained in these T's and C's, unless the Tour Operator consents in writing to other payment arrangements:**
- 4.4.1. **the Client will at all times remain liable for payment of all amounts due and payable by the Client to the Tour Operator under these T's and C's; and**
- 4.4.2. **the Client is and will remain liable to the Tour Operator for all amounts due and payable up to the date of expiration or earlier cancellation of the Tour Package.**
5. CLIENT'S RIGHTS AND RESPONSIBILITIES SPECIFICALLY

The Client:

- 5.1. hereby irrevocably and unconditionally agrees that he/she is taking the Tour Package at his/her own risk;
- 5.2. will adhere strictly and at all times to these T's and C's and the provisions of the Booking Form;
- 5.3. will not engage in any activity, conduct, distribution or trade practice or advertising method which will be harmful, directly or indirectly, to the Tour Operator;
- 5.4. will be entitled to request Tour Package Amendments and/or cancel the Tour Package, at any time, provided that:
- 5.4.1. the Client communicates, without delay, any such Tour Package Amendments and/or cancellations to the Tour Operator in writing;
- 5.4.2. **in the event that the Client elects to cancel the Tour Package (it being recorded that the date of cancellation in this regard shall be deemed to be the date on which the relevant written notice of cancellation is received by the Tour Operator), subject at all times to the provisions of clause 6.2.2:**
- 5.4.2.1. **the Client will be liable to pay a cancellation fee to the Tour Operator, calculated in accordance with the following dates/periods of cancellation and percentages (which is agreed as being reasonable):**

Cancellation from Booking Acceptance Date to 51 (fifty-one) days prior to the Tour Start Date:	25% (twenty-five percent) of the Total Tour Price
Cancellation from 51 (fifty-one) to 30 (thirty) days prior to the Tour Start Date:	50% (fifty percent) of the Total Tour Price
Cancellation within 30 (thirty) days prior to, or on/after, the Tour Start Date:	100% (one hundred percent) of the Total Tour Price

1. any such aforesaid cancellation fee will be paid by the Client to the Tour Operator within 10 (ten) days of the relevant date of cancellation, by way of cleared electronic funds transfer into the bank account of the Tour Operator as indicated in the invoice issued last in time to the Client, or by way of such other method of payment as may be stated in such invoice, failing which the Client will remain bound by the Tour Package and payment thereof in full; and (or at Tour Operator discretion)

5.4.2.3. the Tour Operator will refund to the Client (care of its nominated bank account) such aggregate portion of the Aggregate Tour Fee paid by the Client to the Tour Operator, and not otherwise forfeited to the Tour Operator (whether as a cancellation fee or otherwise), as soon as practicably possible after receipt by the Tour Operator of the cancellation fee contemplated in clauses 5.4.2.1 and 5.4.2.2, and no Party shall have any other claim of whatsoever nature against the other in such circumstances;

5.5. The Client will promptly comply with any reasonable instruction given by the Tour Operator in relation to the Tour Package and matters/aspects incidental thereto;

5.6. will arrive promptly for the start of any scheduled tour per the Itinerary;

5.7. will make its own necessary visa arrangements as well as take appropriate health measures. Participants must have passports valid for six months after the date of return, plus contain at least two unused pages for endorsements;

5.6. The Client will at the Client's expense, take out comprehensive travel insurance, for the duration of the Tour Package, which insurance shall at least cover the loss of Client's personal effects, loss or harm to the Client personally, the Client's medical, hospital, emergency travel and evacuation expenses, repatriation, loss of luggage and expenses associated with the cancellation or curtailment of the Tour Package. It is agreed that:

5.6.1. the Client will procure insurance from an insurer and in such amounts of its election;

5.6.2. the Client will be solely responsible for his/her general safety and for the general safety of all the other persons detailed in the Booking Form (if any), including in relation to the safekeeping of baggage and personal effects, at all times;

5.6.3. the Client will timeously seek the necessary medical advice regarding prophylaxis, vaccination, anti-malaria medication, and general health requirements covering each country which forms part of the Tour Package, and shall ensure the same in respect of the Client and all the other persons detailed in the Booking Form (if any); and

5.6.4. the Tour Operator does not accept any liability (of any nature) for any loss or damage in relation to loss or harm (of whatever nature) to the baggage, personal effects or other property of the Client, or injury or illness to the Client, or loss of life or consequential damages in respect of the Client, which might occur from any cause whatsoever. The Client hereby assumes all risk (of whatever nature) attached to and/or in relation to and/or incurred in the Tour Package;

5.7. will at the Client's sole cost and expense, to the extent applicable:

5.7.1. The Client will comply with and otherwise fulfil the applicable passport, visa and vaccination requirements covering each country which forms part of the Tour Package, it being recorded that the Tour Operator will not be responsible for any persons participating in the Tour Package without the required documents; and

5.7.2. make the necessary arrangements to arrive at the assembly point/s indicated on the Tour Itinerary at the stated times, it being recorded that the Tour Operator will not be responsible for any persons participating in the Tour Package who fail to make such arrangements; See 5.6

5.8. by signing and submitting the Booking Form to the Tour Operator, acknowledges and agrees that in the event that the Tour Package includes travel to isolated regions and/or activities in close proximity with wildlife, the Client and all of the other persons detailed in the Booking Form (if any) assume/s such risks. The Client acknowledges and agrees that he/she will on demand sign an extended standard form specific condition and waiver document on or before the Tour Start Date, which form will be in a form satisfactory to the Tour Operator at all times, and which form will stipulate, amongst other things, that the person signing that form appreciates the risks inherent in travel and adventure, and that such person

**undertakes to participate in the Tour Package at his/her own risk and that such risk could include injury, disease or death;**

- 5.9. will, if applicable, stipulate special requests (if any) in the Booking Form, failing which the Client will be deemed to have no special requests;
- 5.10. will ensure that all payments due to the Tour Operator are paid to the Tour Operator on the due date thereof and otherwise strictly in accordance with these T's and C's;
- 5.11. will not engage in any activities which causes inconvenience or annoyance to any other persons participating in the Tour Package; and
- 5.12. will in the unlikely event that the Client has a complaint against the Tour Operator, first address the complaint with the tour leader responsible for the relevant portion of the Tour Package as stipulated in the Tour Itinerary, so that an opportunity may be afforded to the Tour Operator to investigate and address the complaint. If the Client has any further complaint same must be lodged with the Tour Operator in writing within 30 (thirty) days of the expiration of the Tour Package. Should the Client not follow the procedures set out in this clause 5.12, then the Tour Operator will not investigate or continue to investigate any such complaint, and the Client will have no claim of whatsoever nature against the Tour Operator in such circumstances.

## 6. BREACH, CANCELLATION DUE TO BREACH AND INCIDENTAL MATTERS

### 6. Breach

Save as otherwise provided for in these T's and C's:

- 6.1.1. if the Client fails to timeously pay to the Tour Operator any amount due to the Tour Operator hereunder, and fails to remedy such breach within a period of 3 (three) days after receipt by the Client of written notice from the Tour Operator calling for such default to be remedied, the Tour Operator will be entitled to (without prejudice and in addition to any other rights or remedies which the Tour Operator may have in law), on written notice to the Client, immediately resile from these T's and C's and cancel the Tour Package; and
- 6.1.2. if any of the Parties commits a breach of these T's and C's (other than the breach contemplated in clause 6.1.1) and/or otherwise fails to comply with any of the provisions hereof ("the Defaulting Party"), then the other Party ("the Innocent Party") is entitled to give the Defaulting Party 7 (seven) days (or such longer period as may be reasonably necessary in the circumstances) notice in writing to remedy such breach and/or failure. If the Defaulting Party fails to comply with such notice, then the Innocent Party will be entitled to (without prejudice and in addition to any other rights or remedies which the Innocent Party may have in law, including the right to claim damages), on written notice to the Defaulting Party, immediately resile from these T's and C's and cancel the Tour Package accordingly.

### 6. Cancellation due to breach

- 6.2.1. In the event that the Tour Operator cancels the Tour Package in accordance with the provisions of clause 6.1 (and unless the Parties agree otherwise in writing), the Client will be deemed to have forfeited to the Tour Operator, with effect from the date on which the relevant written notice of cancellation is received (or deemed to have been received) by the Client ("Breach Cancellation Date"), all such amounts already paid by the Client to the Tour Operator as at the Breach Cancellation Date. The Client will have no claim of whatsoever nature against the Tour Operator in such circumstances.
- 6.2.2. In the event that the Client cancels the Tour Package in accordance with the provisions of clause 6.1.2, the Tour Operator will refund to the Client, by way of electronic funds transfer into the Client's nominated bank account, such aggregate portion of the Aggregate Tour Fee as was paid by the Client to the Tour Operator, and not otherwise forfeited to the Tour Operator (whether as a cancellation fee or otherwise), as soon as practicably possible after the Breach Cancellation Date.

### 6. Indemnity for breach by the Client

Without prejudice to any rights or remedies available to the Tour Operator arising from these T's and C's and notwithstanding anything to the contrary contained herein, with effect from the Booking Acceptance Date, the Client hereby irrevocably and unconditionally indemnifies and agrees, on demand, to hold the Tour Operator (and its directors, officers, employees, agents, successors and assigns) harmless against any and all loss, liability, costs or expenses of whatsoever nature (including any and all legal costs), whether directly or indirectly suffered or incurred by the Tour Operator, should the Client and/or any of the other persons detailed in the Booking Form (if any) breach these T's and C's in anyway.

#### 7. FORCE MAJEURE

- 7.1. If any Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under these T's and C's for any cause beyond the reasonable control of that Party ("Affected Party"), including (without limiting the generality of the foregoing) war, civil commotion, riot, insurrection, strikes, lock-outs, fire, explosion, floods and acts of God (each a "Force Majeure Event"), the Affected Party shall be relieved of its obligations hereunder for the period of the Force Majeure Event. In such instance the Affected Party shall not be liable for any delay or failure in the performance of any of its obligations hereunder or for any loss or damages which the other Party may suffer due to or resulting from any such delay or failure, provided that written notice of the inability to perform is given by the Affected Party within 48 (forty eight) hours of the commencement of the Force Majeure Event.
- 7.2. The Affected Party shall use its commercially reasonable endeavours to terminate the circumstances giving rise to the Force Majeure Event and upon termination thereof, the Affected Party shall forthwith give written notice thereof to the other Party.
- 7.3. In the event that the circumstances giving rise to the Force Majeure Event are not terminated by no later than the date which is 10 (ten) days from the commencement of the Force Majeure Event, then the Tour Package shall be automatically cancelled, and the Tour Operator shall be required to refund to the Client such aggregate portion of the Aggregate Tour Fee paid by the Client to the Tour Operator, and not otherwise forfeited to the Tour Operator (whether as a cancellation fee or otherwise), as soon as practicably possible after the date of such cancellation, by way of electronic funds transfer into the Client's nominated bank account. No Party shall have any other claim of whatsoever nature against the other in such circumstances.

#### 8. DISPUTE RESOLUTION

- 8.1. Save as expressly detailed to the contrary, in the event of any dispute, controversy or claim (of whatever nature) ("dispute") as to the rights and obligations of the Parties or as to any other matter arising from or out of or that in any way is related to these T's and C's, including (but not limited to) any question as to the existence, validity or termination of these T's and C's, the Parties will attempt in good faith, by negotiation, to resolve the dispute between themselves.
- 8.2. If the Parties are unable to resolve a dispute by mutual agreement within 14 (fourteen) days after the dispute is first communicated in writing by any Party to the other Party, then the dispute shall be submitted by either Party to and decided by arbitration in accordance with the then applicable commercial rules of the Arbitration Foundation of Southern Africa NPC ("AFSA"), by a single arbitrator agreed upon between the Parties or, failing agreement within 7 (seven) days of the dispute being submitted to arbitration, the arbitrator shall be appointed by AFSA.

As regards any such arbitration:

- 8.3.1. the decision of the arbitrator shall be final and binding on the Parties and may be made an order of any competent court having jurisdiction at the instance of any of the Parties;
- 8.3.2. unless otherwise agreed by the Parties in writing, the arbitration shall be held in Cape Town, South Africa; and
- 8.3.3. the arbitrator shall be obliged to give in writing the reasons for any decision made by the arbitrator in the course of the arbitration.
- 8.4. Notwithstanding anything to the contrary contained in this clause 8, either of the Parties shall be entitled to apply for, and if successful, be granted, an interdict or other interim and/or urgent relief from any competent court having jurisdiction.

#### 9. ADDRESSES FOR LEGAL PROCESSES AND NOTICES

- 9.1. Any notice or process to be served on either of the Parties in terms of these T's and C's may be served on such Party at the following addresses:
- 9.1.1. as regards the Client, the address specified in the Booking Form; and
- 9.1.2. as regards the Tour Operator, the address specified in the Booking Confirmation.
- 9.2. Any Party may at any time, by notice in writing to the other Parties, change its elected address to any other address which is not a post office box or *post restante*.
- 9.3. Any notice or other communication to be given to either of the Parties in terms of these T's and C's shall be valid and effective only if it is given in writing, provided that any notice given by email shall be regarded for this purpose as having been given in writing.
- 9.4. A notice given as set out above shall be deemed to have been duly given and received (unless the contrary is proved):
- 9.4.1. if delivered by hand, on the date of delivery;
- 9.4.2. if sent by courier, on the date of delivery by the courier service concerned; or
- 9.4.3. if sent by email (provided that the address concerned includes an email address), on the expiration of 24 (twenty-four) hours after the time of transmission.
- 9.5. Any written notice actually received by a Party shall be valid, notwithstanding that it may not have been given in accordance with the preceding provisions of this clause 9.

#### 10. SEVERABILITY

Any of these T's and C's which is or may become illegal, invalid or unenforceable in any jurisdiction shall, with respect to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* (as if not written) and severed from the balance of these T's and C's, without invalidating the remaining T's and C's or affecting the validity or enforceability of any of these T's and C's in any other jurisdiction.

#### 11. CESSION, DELEGATION, ASSIGNMENT

- 11.1. The Tour Operator will be entitled, without the consent of the Client but on prior written notice to the Client to cede, delegate or assign all or any of the Tour Operator's rights and/or obligations under these T's and C's to any third party ("the Cessionary").
- 11.2. On any cession, assignment and/or delegation taking place in terms of clause 11.1, the Client shall, if so required by any Cessionary, make all payments directly to the Cessionary in question.
- 11.3. The Client will not, without the prior written consent of the Tour Operator, be entitled to cede, assign, delegate or otherwise transfer any of the Client's rights or obligations under these T's and C's to any third party.

#### 12. WHOLE AGREEMENT

These T's and C's, as read conjunctively with the Booking Form, constitutes the whole agreement between the Parties in relation to the subject-matter of the Booking Form, and the Tour Operator shall not be bound by any representation/s, warranty/ies, undertaking/s, promise/s or the like (whether or not made by the Tour Operator, its companies or servants) which are not recorded herein or in the Booking Form.

#### 13. NO WAIVER

No relaxation, indulgence or extension of time granted by any Party ("the Grantor") to the other Party shall be construed as a waiver of any of the Grantor's rights in terms hereof, or a novation of any of these T's and C's or estop the Grantor from enforcing strict and punctual compliance with these T's and C's.

#### 14. NO VARIATION

No variation of, addition to, consensual cancellation of or waiver of any right arising in terms of these T's and C's (including this clause 14) and/or the Booking Form shall be of any force or effect unless expressly agreed by the Parties in writing (including, by way of example, via email communication).

## 15. GOVERNING LAW

To the maximum extent permissible, these T's and C's shall be governed by and construed in accordance with the laws of South Africa.

## 16. COSTS

All and any costs incurred by either Party arising out of or in connection with a breach of any of these T's and C's by the other Party, including but not limited to legal costs on the attorney and own client scale, shall be borne by the Party in breach.

## 17. DEFINITIONS AND INTERPRETATION

### DEFINITIONS

In these T's and C's, unless a contrary intention clearly appears, the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

- 17.1.1. **"Aggregate Tour Fee"** means the aggregate amount of the Second Tour Fee plus the Final Tour Fee;
- 17.1.2. **"Applicable Taxes"** means, without limitation, any VAT, sales taxes, charges, imposts, duties, levies, deductions, withholdings or fees of any kind whatsoever, or any amount payable on account of or as security for any of the foregoing, imposed, levied, collected, withheld or assessed by any relevant taxation authority or similar Governmental Authority from time to time together with any penalties, fines or interest;
- 17.1.3. **"Arranging Fee"** means that portion of the Total Tour Price which comprises the Tour Operator's fee for planning, managing and/or arranging the Tour Package;
- 17.1.4. **"Booking Acceptance Date"** has the meaning ascribed thereto in clause 1.3;
- 17.1.5. **"Booking Confirmation"** means the written confirmation submitted by the Tour Operator to the Client, in such form as the Tour Operator may determine suitable in its sole and absolute discretion (including, by way of example, in the form of email communication), wherein the Tour Operator confirms the booking of the Tour Package, and which document will record (without limitation):
  - 17.1.5.1. the Tour Operator's full name, and VAT registration number, if any;
  - 17.1.5.2. the Tour Operator's address; and
  - 17.1.5.3. a full description of the Tour Package;
- 17.1.6. **"Booking Form"** means the Tour Operator's standard written booking form (as determined by it) which can be completed, signed and submitted to the Tour Operator for the purposes of engaging the services of the Tour Operator as contemplated herein, which standard booking form may be updated by the Tour Operator from time to time, without notice;
- 17.1.7. **"Client"** means the person who signed and submitted the Booking Form to the Tour Operator;
- 17.1.8. **"CPA"** means the South African Consumer Protection Act, 2008 (Act No. 68 of 2008);
- 17.1.9. **"Deposit"** means a non-refundable deposit of 25% (twenty five percent) of the Quoted Tour Price;
- 17.1.10. **"Proforma Deposit Invoice"** means the tax invoice issued by the Tour Operator to the Client with the Booking Confirmation, marked as the "Proforma Deposit Invoice", and which shall record (without limitation), as separate line items, the quantum of:
  - 17.1.10.1. the Deposit, exclusive of any Applicable Taxes (e.g. VAT) if any, and detailing:
    - 17.1.10.1.1. the portion thereof which compromises the Arranging Fee;
    - 17.1.10.1.2. the portion thereof which comprises the Tour Operator's fee for the facilitation of the Tour Package;

- 17.1.10.2. any applicable taxes (e.g. VAT);
- 17.1.10.3. the Deposit, inclusive of any Applicable Taxes (e.g. VAT) if any; and
- 17.1.10.4. the total international and/or domestic airfare/s payable (if any);
- 17.1.11. "ECTA" means the South African Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);
- 17.1.12. "Final Invoice" means the tax invoice issued by the Tour Operator to the Client chronologically after the Proforma Second Invoice, marked as the "Final Invoice", and which shall be issued in respect of the Final Tour Fee *mutatis mutandis* in accordance with the provisions of clause 17.1.10, and shall in addition record any third party charges payable by the Client in relation to any special request/s of the Client stipulated in the Booking Form (to the extent applicable);
- 17.1.13. "Final Tour Fee" means 75% (seventy five percent) of the Quoted Tour Price;
- 17.1.14. "Parties" means, collectively, the Client and the Tour Operator, and "Party" shall mean any one of them as the context may indicate;
- 17.1.15. "Quoted Tour Price" means the applicable quoted price including VAT (where applicable) and including the Arranging Fee for the Tour Package, as set out by the Tour Operator on its website (if any), failing which as set out in its brochures and advertising material, from time to time, which quoted price the Tour Operator may update/replace from time to time, without notice;
- 17.1.16. "Proforma Second Invoice" means the tax invoice issued by the Tour Operator to the Client chronologically after the Proforma Deposit Invoice, marked as the "Proforma Second Invoice", and which shall be issued in respect of the Second Tour Fee *mutatis mutandis* in accordance with the provisions of clause 17.1.10;
- 17.1.17. "Second Tour Fee" means 0% (nil percent) of the Quoted Tour Price;
- 17.1.18. "Signature Date" means the date upon which the Client signed the Booking Form;
- 17.1.19. "South Africa" means the Republic of South Africa;
- 17.1.20. "T's and C's" means these terms and conditions;
- 17.1.21. "Total Tour Price" means the Deposit plus the Aggregate Tour Fee;
- 17.1.22. "Tour Itinerary" means the itinerary relating to the Tour Package;
- 17.1.23. "Tour Operator" means the tour operator stipulated in the Booking Form;
- 17.1.24. "Tour Package" means the tour package planned and/or arranged and/or facilitated by the Tour Operator, as stipulated in the Booking Form;
- 17.1.25. "Tour Package Amendments" means any change of whatsoever nature required by any Party in relation to the Tour Package after the Signature Date, including (without limiting the generality of the foregoing) changes as to flights, dates and times, accommodation, arranged sightseeing and other details of and/or incidental to the Tour Package;
- 17.1.26. "Tour Start Date" means date of commencement of the Tour Package;
- 17.1.27. "VAT" means value added tax as contemplated in the VAT Act; and
- 17.1.28. "VAT Act" means the South African Value-Added Tax Act, 1991 (Act No. 89 of 1991).

## 17.2. INTERPRETATION

Furthermore, unless a contrary intention clearly appears:

- 17.2.1. references herein to "clauses" shall be to the clauses of these T's and C's;
- 17.2.2. the headings of the clauses are for the purpose of convenience and reference only and shall not be used in the interpretation of, nor modify, nor amplify these T's and C's;

- 17.2.3. words importing the singular, include the plural, and *vice versa*, and words importing the masculine gender shall include the feminine and neuter genders, and *vice versa*, and words importing persons shall include partnerships, trusts and bodies corporate, and *vice versa*;
- 17.2.4. if any provision in the definitions set out in clause 17 is a substantive provision conferring rights or imposing obligations on any Party, then notwithstanding that such provision is only contained in clause 17, effect shall be given thereto as if such provision were a substantive provision in the body of these T's and C's;
- 17.2.5. these T's and C's shall be binding on and enforceable by the permitted trustees, assigns or liquidators of the Parties as fully and effectually as if they had bound themselves hereto in the first instance and reference to any Party shall be deemed to include such Party's permitted trustees, assigns or liquidators, as the case may be;
- 17.2.6. where figures are in these T's and C's described both in numerals and in words, words shall prevail in the event of any conflict between the two;
- 17.2.7. when any number of days is prescribed in these T's and C's, same shall be reckoned exclusively of the first and inclusively of the last day;
- 17.2.8. any reference in these T's and C's to legislation or subordinate legislation is to such legislation or subordinate legislation at the Signature Date and as amended and/or re-enacted from time to time;
- 17.2.9. any reference in these T's and C's and to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented;
- 17.2.10. where any term is defined within the context of any particular clause, the term so defined shall, unless it appears clearly from the clause in question that such term has limited application to the relevant clause, bear the meaning ascribed to it for all purposes in terms of these T's and C's, notwithstanding that such term has not been defined in this clause 17;
- 17.2.11. none of these T's and C's shall be construed against or interpreted to the disadvantage of the Tour Operator by reason of the Tour Operator having drafted such provision;
- 17.2.12. the words:
- 17.2.12.1. "sign", "signature", "signing" and all derivatives thereof, when used in relation to the Booking Form, shall include an electronic signature as contemplated in ECTA; and
- 17.2.12.2. "completed", "submit", "submission", "submitted" and all derivatives thereof, when used in relation to the Booking Form, shall include electronic completion and submission;
- 17.2.13. the words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s. Furthermore, the words "other" and "otherwise" shall not be construed *eiusdem generis* with any preceding words if a wider construction is possible; and
- 17.2.14. the expiration or termination of the Tour Package shall not affect such of these T's and C's as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.