

TDM'S STANDARD TERMS & CONDITIONS (PREPAYMENT) C

1. Contracting Parties

- 1.1. The customers are either:
- 1.1.1. tour operator; who contracts with one or more Business/es (as defined in Clause 1.2), or
 - 1.1.2. a travel agent, who contracts with one or more of the Business/es (as defined in Clause 1.2), on behalf of third party travellers (the client/s of such travel agent or tour operator); or
 - 1.1.3. a traveller/s, booking contracting in his/her/its personal capacity, with one or more of the Business/es (as defined in Clause 1.2).
- 1.2. Tourvest Destination Management (hereafter referred to as TDM), is a business division of Tourvest Holdings (Pty) Ltd, a company duly incorporated in accordance with the Company Laws of South Africa, Registration Number 2008/003719/07. TDM operates its business under various brands (each brand is referred to as "the Business" and collectively as "the Businesses"). All such Businesses are registered members of the Southern Africa Tourism Services Association (SATSA). These Businesses currently are:
- 1.2.1. Welcome Tourism Services *(and its associated brands)*
 - 1.2.2. Your Africa
 - 1.2.3. Focus Tours
 - 1.2.4. Tourvest Destination Management
 - 1.2.5. TDM Air
 - 1.2.6. TEAM Sports Travel
 - 1.2.7. TEAM Destination Management
 - 1.2.8. SST
 - 1.2.9. Great Safaris
 - 1.2.10. Liberty Southern Africa
 - 1.2.11. Tourvest – Incentives / Meetings & Events
- 1.3. The Business/es possesses all licenses and permits necessary to conduct business as a tour operator in Southern Africa.
- 1.4. The customer chooses as its/his/her *domicilia et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, arising from any transaction or claim, which is governed by these terms and conditions, the physical address and facsimile number set out in the customer particulars schedule. Any notice given by any party to any other, which is transmitted by facsimile copy to the addressee at the addressee's facsimile address for the time shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the date of successful transmission thereof.

2. Exclusion of Liability, Suppliers Terms & Risk

- 2.1. The Business/es utilise the products of various travel suppliers ("the Tour").
- 2.2. The agreements between TDM and / or the Business/es contract with the suppliers as principals and not on each other's behalf.

2.3. The booking of the supply of the products may be in TDM and / or the Business/es names, or the supplier may undertake to supply the product to TDM and / or the Business / es, but it is unequivocally understood between TDM and / or the Business/es and the supplier that TDM and / or the Business/es will not make use of the supply or provide the product to the traveller. The supplier is obliged to render the product, paid for by TDM and / or the Business / es, to travellers whose names will be furnished to the supplier in due course by TDM and / or the Business/es. Thus the supplier knows that the products, to be rendered in the future, will be rendered to travellers in terms of the agreement it has with TDM and / or the Business/es. Moreover, the supplier knows that if it renders the future products to the traveller satisfactorily, this will constitute performance in terms of the agreement with TDM and / or the Business/es, discharging the supplier's obligation towards both TDM and / or the Business/es and the traveller, the latter of whom will be the recipient.

2.4. While the Business/es makes every effort:

2.4.1. to engage quality suppliers among the airlines, hotels, tour operators and other service providers to provide the travel products making up the Tour featured in this brochure; and

2.4.2. to ensure that the various services making up the Tour will be carried out efficiently and as specified,

it does not have direct control over the provision of services by suppliers and shall not be liable for any loss, damage, injury, additional cost, accident, delay, irregularity that may be occasioned by any error or default, act or omission of any supplier in carrying out the arrangements of the Tour, or otherwise in connection therewith.

2.5. The Business/es accepts no liability for:

2.5.1. changes, omissions or delays before or during the course of the Tour occasioned by technical difficulties, weather conditions, communication breakdowns or events beyond the control of the Business/es;

2.5.2. any cancellation or curtailment of the Tour as a result of the customer's personal circumstances, e.g. death or illness,

“the Changed Circumstances Event/s”.

All expenses occasioned by the Changed Circumstances Event/s, including but not limited to unscheduled extensions or curtailment of accommodation, changes to scheduled flights, additional airfares, telephone and meal costs, etc, will be for the customer's account.

2.6. If in the opinion of the Business/es the fulfilment of the Tour is considered impossible, illegal or inadvisable because of weather conditions, unrest, strikes, war and/or any other adverse factors beyond the Business/es control, the Business/es may at any time cancel the Tour or what remains of it or make alterations to the route, accommodation, price and/or any other aspect thereof as it deems fit, and any losses and expenses resulting from such cancellation or alteration shall be for the account of the customer.

2.7. All bookings are subject to the terms and conditions specified by the supplier of the services which make up the Tour. The Business/es will provide on request, the identity of the supplier and such supplier's terms and conditions may include, but are not limited to, provisions regarding the cancellation fees or amendment fees applicable to confirmed reservations, refunds/no refunds for no-shows/ unused services; late booking fees; baggage allowances; confirmation of flights, etc. In the case of airlines, the general cancellation fee applicable to tickets issued, is 100% (one hundred per centum); the typical baggage allowance 20kg; extension of ticket validity is not permitted and the customer must reconfirm his/her flight within 72 hours prior to departure.

- 2.8. Save in the event of wilful misconduct or gross negligence by the Business/es, neither the Business/es nor its holding or parent company or representatives shall be liable for any loss, injury, death or damages, arising from the Tour.
- 2.9. The Business/es will not be responsible for any charges that appear on a traveller's credit card not levied/effectuated directly by the Business/es (e.g. a credit card charge by a hotel), nor accept responsibility for having any of these charges reversed or corrected upon the traveller's return to his/her country of departure/final destination.
- 2.10. Where the customer is a tour operator or travel agent, it is contracting with travellers, and that such traveller's participation in the Tour offered by the Business/es, is subject to these standard terms and conditions and provide a copy of same to the traveller on request. The travel agent, traveller or tour operator in question, indemnifies and holds the Business/es harmless against all claims for damages, loss, injury or expense, which any traveller may claim against the Business/es in the event that such claim is excluded under the terms and conditions set out herein.
- 2.11. Where the customer books travellers who are members of the customer's group, including but not limited to family members or minor children, the customer in question, in booking, indemnifies and holds the Business/es harmless against all claims for damages, loss, injury or expense, which any such member of the group may claim against the Business/es in the event that such claim is excluded under the terms and conditions set out herein. This indemnity shall be binding on the estate of the customer who so indemnifies the Business/es.

3. Quoted Prices & Price Variations

- 3.1. Prices quoted:
 - 3.1.1. in the most current release of the Business/es brochure price schedule;
 - 3.1.2. in any of the Business/es' scheduled escorted tour price schedules;
 - 3.1.3. in any specific FIT or group quote issued by the Business/es,are:
 - a) subject to adjustment in accordance with Clause 3.1(b), valid and guarantee by the Business/es, only for the period of validity as stated on the price schedule/quote in question;
 - b) subject to increase, forthwith on notice by the Business/es, in respect of any fuel surcharge and/or increase in entrance fees and/or government and/or regional levies and/or taxes.
- 3.2. The Business/es reserves the right to adjust prices, on expiry of any period of validity of a price schedule/quote issued by the Business/es, by way of a revised price schedule/quote, in accordance with, e.g. increases in airfares, hotel rates, transport costs and currency fluctuations.
- 3.3. Airfares are subject to the prices and conditions quoted by the airlines and cannot be guaranteed by the Business/es.
- 3.4. All information contained in the Business/es' brochure/itinerary and price schedules are to the best of the Business/es' knowledge and belief true and correct, but the Business/es accepts no liability for any errors/inaccuracies contained therein.
- 3.5. Terms and conditions, including any exclusion of bookings, or discounts applicable to minor children, are as set out in the specific price schedule, or quote.
- 3.6. Prices set out in the price schedule/quote, do not include any items or services not specified therein (and/or the brochure and/or the Business/es confirmation of booking). Typical items not included may be: a tour guide, airport taxes, costs of obtaining visas

and passports, telephone calls, laundry, entertainment arrangements, gratuities and portage, meals and beverages, airfares or any other item of a personal nature not specified.

- 3.7. In the event of any conflict between these terms and conditions and the brochure terms and/or the Business/es booking confirmation, the provisions of the brochure terms and/or the Business/es booking confirmation shall prevail.

4. **Reservations**

- 4.1. The Business/es does not accept any legal or contractual obligations in relation to conditional booking requests.
- 4.2. Once the customer makes an unconditional booking request, whether telephonically or by facsimile or email or on any web enabled booking system to the Business/es, the Business/es shall forward a written confirmation of booking by facsimile or email.

- 4.3. On transmission of the Business/es confirmation of booking:
- 4.3.1. a binding contract between the customer shall result on the terms and conditions set out herein, read together with the relevant pricing schedule and/or quote and/or brochure itinerary and/or Business/es confirmation of the booking; and
 - 4.3.2. the customer shall be liable to pay the tour price as set out in the Business/es confirmation of booking (alternatively, the price schedule/quote applicable to such reservation).

5. Payment and Penalty Fees

- 5.1. Payment shall be due and payable by the customer on or before the time periods set out in the specific Business/es booking confirmation.
- 5.2. Unless the booking confirmation specifies otherwise, the customer shall be liable to effect payment to the Business/es of:
 - 5.2.1. a deposit of 20% of the total price.
 - 5.2.2. the balance owing of the total price on the booking no later than 4 (four) weeks prior to departure,

on presentation of the Business/es' invoice in respect thereof.
- 5.3. In the event of any reservation within 30 (thirty) days prior to departure, the total price shall be immediately due and payable on confirmation. Cancellation terms apply on confirmation as per 6.1 below.
- 5.4. In relation to all time periods stipulated for payment in the specific Business/es booking confirmation, time shall be of the essence and the Business/es shall be entitled to cancel any reservation where payment (including deposits) has not been made by due date.
- 5.5. Where a deposit has been paid and the reservation is subsequently cancelled by the Business/es, for failure to pay the balance outstanding, the deposit paid will be forfeited to the Business/es.
- 5.6. Documentation and vouchers will only be delivered to the customer on receipt of payment in full and completed booking forms and travel declarations (if applicable) by the Business/es.
- 5.7. The Business/es will accept payment for all land arrangements in CASH ONLY. Payment by TT or EFT will constitute a cash payment. Acceptance of cheque or Credit Card payments are in the Business/es' sole discretion and may be declined without explanation.
- 5.8. When payment is made in a different currency to the currency quoted in the brochure/quote, then acceptance of payment in a foreign currency must first be approved by the Business/es, and will be subject to the rate of exchange, applied by the Business/es' bankers at the time of receipt of payment. The customer shall be liable to effect payment to the Business/es of any shortfall (and the Business/es shall be responsible to reimburse the customer for any overpayment), resulting from exchange rate fluctuations.
- 5.9. The Business/es reserves the right to charge a booking fee and/or a handling fee which will be included in the total price.
- 5.10. The Business/es shall be entitled in its sole discretion to appropriate any amounts received by the Business/es from the customer towards the payment of any cause, debt or amount owing by the customer to the Business/es whatsoever. Each payment made

by the customer to the Business/es, shall be applied firstly in respect of interest accrued and the balance, if any, shall be applied in reduction of the capital sum.

- 5.11. A certificate under the hand of any director / officer of the Business/es as to:
- 5.11.1.1. the existence and amount of any indebtedness at any time of the customer to the Business/es (“the debt”);
 - 5.11.1.2. the fact that the due date for payment of the debt has arrived;
 - 5.11.1.3. the amount of interest accrued on the debt (calculated with reference a certificate obtained in terms of Clause 5.1.6);
 - 5.11.1.4. any other fact, matter or thing relating to the customer’s debt and/or obligations, in terms of any booking or indebtedness between the customer and the Business/es,
- shall for the purpose of provisional sentence or summary judgement or any other proceedings against the customer in any competent court be:
- a. prima facie proof of the correctness of the matters stated therein;
 - b. deemed to be sufficient particularity for the purposes of pleading or trial; and
 - c. valid as a liquid document for those purposes.
- 5.12. Notwithstanding anything to the contrary herein, the customer shall be obliged to pay the Business/es the whole of the outstanding balance of its debt, together with accrued interest thereon immediately, and the Business/es shall be entitled to proceed for the immediate recovery thereof without prior notice to the customer and without prejudice to the Business/es other rights in law and/or without prejudice to any claims which the Business/es may have against the customer arising from any breach of these terms and conditions or any booking, should:
- 5.12.1.1. The customer fails to pay any amount due by the customer to the Business/es in terms of this agreement on the due date for payment thereof; or
 - 5.12.1.2. The customer fails to have any judgment granted against it set aside within 14 (FOURTEEN) days after the date on which any such judgment is granted against the customer; or
 - 5.12.1.3. The customer breaches any material term hereof; or
 - 5.12.1.4. The customer compromises or attempt to compromise with any of its creditors; or
 - 5.12.1.5. The customer commits any act which, if committed by an individual, would constitute an act of insolvency; or
 - 5.12.1.6. The customer be placed in liquidation or judicial management or being wound up, whether provisionally or finally and whether voluntarily or compulsorily.

6. Cancellation & Amended Booking Fees

- 6.1. In the event of the customers cancelling their reservation for any reason, such cancellation must be made in writing (or if made telephonically, confirmed forthwith in writing), in which event the customer shall be liable for:
- 6.1.1. The Business/es cancellation charges as follows:
- | | | |
|---------------------------------------|---|---------------------|
| 30 days or more prior to travel date | : | 0% of total price |
| 21-29 days prior to travel date | : | 25% of total price |
| 14-20 days prior to travel date | : | 50% of total price |
| 7-13 days prior to travel date | : | 70% of total price |
| less than 7 days prior to travel date | : | 100% of total price |
- 6.1.2. Any further special cancellation charges that, e.g. may apply for peak periods, as is set out in the Business/es booking confirmation (which shall take precedence and substitute the cancellation charges due in terms of Clause 6.1.1);
- 6.1.3. All cancellation charges of the supplier/s of the products and services, to which the booking relates, save that the liability of the customer shall be in respect of the greater of either the cancellation charges in respect of this Clause 6.1.3, or the cancellation charges due in terms of Clause 6.1.1 or 6.1.2 (as the case may be).
- 6.2. Amendments and all cancellations en route must be made with the Business/es directly. The customer shall be liable for all costs (including repatriation and the administrative fees of the Business/es incurred as a result of any en route cancellations, by the customer including but not limited to cancellation because of ill health or injury.
- 6.3. The Business/es have the right to charge for amendments to reservations at a change fee of:
- 6.3.1. Amendments received 30 (thirty) days or more prior to departure: R 100 (excl. VAT) for each alteration made to the booking after the initial reservation plus the Business/es and/or suppliers published administration charges (from time to time), will be levied on all documentation or vouchers submitted for re-issue or refund.
- 6.3.2. Amendments received within 30 (thirty) days prior to departure: The applicable cancellation charge, as set out in Clause 6.1.1 or 6.1.2 (as the case may be), will be levied as the change fee.
- 6.4. No refunds will be made for no-shows, or any unused services irrespective of whether they form part of the basic inclusive tour price, or whether they are in respect of pre-booked or optional arrangements.

7. Changes to Hotels, Coaches, Vehicles & Other Services

- 7.1. The products and services included on all booking itineraries, are subject to availability. The Business/es reserves the right to substitute hotels or coach operators or other services listed with others of the same or next available higher or lower category, at no additional cost to the traveller, even after commencement of the tour.
- 7.2. The Business/es reserves the right to use smaller or larger vehicles on scheduled escorted tours should final traveller numbers justify such change.

8. **Accommodation**

Unless specifically stated otherwise in the brochure itinerary, pricing schedule or quote, all accommodation is based on 2 (two) people sharing a twin-bedded room. Restrictions on the number of adults and/or children per room, are as stated in the specific quotation or supplier's terms and conditions, which restrictions are available on request. Specific room/bed requests are subject to availability and additional costs at the time of enquiry.

9. **Special Requests**

Special requests must be made at the time of booking. The Business/es will endeavour to comply with the special requests, which will be for the cost of the traveller, but cannot guarantee that such requests will be met.

10. **Travel Documents, Passports, Visas, Vaccinations, Inoculations and Re-entry Permits and International Driver's Licenses**

10.1. All travellers will be personally responsible for ensuring that they are in the possession of and have complied with:

10.1.1. the correct travel documentation, including passports valid for the minimum period after the tour, required by law in each country the traveller will visit;

10.1.2. the correct visas/re-entry permits, valid for the countries visited - the visa costs incurred are for the passenger's own account; and

10.1.3. health, foreign exchange and other legal requirements

10.2. The Business/es shall not be responsible for any consequences whatsoever should the traveller fail to ensure that he/she has complied with the necessary health, passport, visa, re-entry permits, or other legal requirements. Due to the constantly changing requirements of each country, the Business/es shall not be responsible or liable for any information, which it or its representative may furnish to the traveller in relation to the above. The onus shall remain on the passenger at all times to ensure that he/she has complied with such requirements.

10.3. If a traveller intends to drive a rental car, he/she should obtain an international driving permit from his/her local transport authority. The traveller must also be in possession of his/her local driving license and produce same at the car rental check-in counter.

11. **Insurance**

11.1. All travellers are advised to and are solely responsible to take out comprehensive travel insurance and to familiarise themselves with any exceptions and conditions as may be imposed by the insurance Business/es or underwriters issuing the policy of insurance which they select. The Business/es shall not be responsible or liable:

11.2. for any information which it or its representatives furnish in relation to travel insurance; or

11.3. for filing/prosecuting a claim on the traveller's behalf against any insurer/underwriter who has issued a policy to the traveller;

11.4. for any claim disputed/rejected by the insurers.

12. **Travel Declarations**

The Business/es requires that all foreign payments that are made on behalf of any South African travellers, must be deducted from the traveller's foreign exchange allowance. A currency declaration to this effect must be lodged before final documentation can be released.

13. **Jurisdiction**

- 13.1. All matters arising from or in connection with these terms and conditions and any contract concluded by the customer with the Business/es, their validity, existence and termination shall be determined in accordance with the laws of the Republic of South Africa.
- 13.2. Should any dispute of any nature whatever arise from or in connection with these terms and conditions and any contract concluded by the customer with the Business/es, then at the election of any party, such dispute shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA. The customer by its/his/her signature hereto expressly consent to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency and irrevocably authorizes the Business/es to apply, on behalf of all parties to such dispute, in writing, to the secretariat of AFSA in terms of Article 23(1) of the aforesaid rules for any such arbitration to be conducted on an urgent basis.
- 13.3. Either party may appeal the decision of the arbitrator or arbitrators in terms of the AFSA rules for commercial arbitration.
- 13.4. Nothing herein contained shall be deemed to prevent or prohibit either party from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 13.5. Any arbitration in terms of this Paragraph 13 shall be conducted *in camera* and the parties shall treat as confidential and not disclose to any third party details of the dispute submitted to arbitration, the conduct of the arbitration proceedings or the outcome of the arbitration, without the written consent of the other party.
- 13.6. The provisions of this Paragraph 13 will continue to be binding on the parties notwithstanding any termination or cancellation of any contract concluded by the customer with the Business/es.

14. **General Terms**

- 14.1. The Business/es shall not be bound by any representation, warranty, promise or the like not recorded herein or agreed to by it in writing. No representation, term, warranty or condition express or implied shall be considered to be or have been made or agreed or implied by reference to any other writing, advertisement or conversation.
- 14.2. No indulgence, which the Business/es may grant to any party, shall constitute a waiver of any of the rights of the Business/es who shall not thereby be precluded from exercising any rights against the customer and/or the traveller which may have arisen in the past or which might arise in the future.
- 14.3. Each term or condition of these terms and conditions shall be separate and separately enforceable from the other terms and conditions herein, and shall in no way be limited or restricted by reference to or inference from any other terms or conditions. If any term or condition herein, shall be found to be illegal or unenforceable then the remaining terms and conditions hereof shall be and remain binding.
- 14.4. Should the Business/es appoint a tour guide in respect of any tour, then the traveller shall be obliged to comply with all reasonable instructions of such tour guide. The Business/es reserves the right to terminate the tour of any traveller who wrongfully or unlawfully fails to adhere to the reasonable instructions of an appointed tour guide, and/or causes any wrongful disruption, disturbance or nuisance to any other traveller, tour group or service provider.
- 14.5. All travellers shall comply with general Codes of Conduct as issued by the Business/es from time to time, including any prohibition on smoking imposed on any coaches and at any hotels/venues on any tour.

- 14.6. The customer shall be solely responsible for ensuring that he/she is physically and mentally capable of undertaking the journey and participating in the activities that constitute the tour itinerary.