

TUSKS AND TRAILS LIMITED

TERMS AND CONDITIONS

1. Interpretations & Definitions

(a) In these Terms and Conditions, unless the context otherwise requires: -

“The Company” means Tusks & Trails Ltd, a destination management Company and ground handler duly registered and operating in Zambia, with its registered office located at Batoka Sky, Sichango Road, Livingstone, Zambia, which company may from time to time operate in Zimbabwe, Malawi & Botswana;

“The Client” means any person, be it a natural person or a body corporate including state agencies, associations or partnerships, as the case may be, who engages the Company to book a tour, service or activity either directly, or through a duly authorized Travel Agent or Tour Operator, and one who intends to take part in such tour, service or activity thereof;

“Travel Agent” or “Tour Operator” means any person, be it a natural person or a body corporate, as the case may be, who acts on behalf of a Client, to engage the Company in booking a tour, service or activity;

“Supplier” or “Subcontractor” means any person, be it a natural person or a body corporate including state agencies, associations or partnerships, as the case may be, contracted by the Company to provide a tour, service or activity to the Client, or any other associated activity forming part of the Client’s proposed itinerary;

“Activities” and “Services” means the services and activities as provided by the Suppliers or Subcontractors, contracted by the Company which services and activities may include but not limited to accommodation, hotels, restaurants, tours and flights;

“Agreement or Contract” may be used interchangeably and shall mean these terms and conditions together with the Company’s proforma invoice and or any other document issued by the Company thereof;

“Child” shall mean a child as defined by the local laws;

“Itinerary” shall be construed as such;

“Force majeure” means any event which the Company or the Supplier concerned, could not, even with due care, foresee or avoid or anticipate, and such events may include, whether actual or threatened, war, riot, civil strife and unrest, terrorist activity, industrial

dispute, natural or nuclear disaster, significant risks to human health such as the outbreak of serious disease at the travel destination, adverse weather conditions, fire and all other similar events outside of the Company's control;

"A company" shall include any body corporate, incorporated or otherwise and shall include partnerships and firms;

"A party" shall include personal representatives, successors and or duly appointed assignees;

"Including" shall be construed to be all inclusive without limiting the generality of the words being preceded;

(b) Headings and subheadings are for ease of reference and any reference to a specific clause, or a condition shall be construed accordingly in that regard.

(c) Any ambiguities, inconsistencies, or conflict between any provisions of the documents that may form part of the Agreement shall be construed in favour of these terms and conditions herein.

(d) The ***Contra Proferentem*** rule shall not apply to the interpretation of these terms and conditions, and as such no provision contained herein shall be interpreted against the Company.

2. Exclusion of Liability & Risk

(1) The Company shall not, under any circumstances whatsoever, be held liable or undertake responsibility for: -

a) any damage, injury or loss suffered by the Client (including but not limited to personal injury and or death) as a result of, or in connection with any tour or activity provided by any Supplier contracted by the Company;

b) Any changes or delays occasioned during, before or after the course of any tour or activities due to circumstances beyond the Company's control;

c) Any abridgement or cancellations of any tour or service resulting from the Client's own circumstances;

- d) Any losses incurred as a result of the Suppliers' own default or its negligence in carrying out or in its provisions of the tours or services thereof;
- e) Damage of any nature including damage to property, personal injury and or death sustained by the Client resulting from any cause whatsoever that may include negligence not occasioned by the Company;
- f) any claim of whatever nature and occasioned howsoever to the Client or suffered by the Client's heirs, trustees, personal representatives, third parties, assignees or any other person acting on behalf of the Client and the Client shall undertake to waive all such liability that may accrue to the Client and the aforesaid persons.
- g) Any charges that may be incurred on the Client's credit card which are not directly effected by the Company and the Company shall not be responsible for any rectification of such charges.
- h) Any damage, injury or losses occasioned to the Client as a result of the Company using its discretion to cancel any tour, service or activity, or to make any alterations to the route, accommodation, price, or any aspect thereto, when it deems that the performance of such services or the proposed itinerary would be impossible or be rendered illegal, and all such losses shall be on the Client's account.

(2) However, if for whatever reason, it is found that the Company is not protected by these terms and conditions herein, and the Company is found to be liable in any way for the loss suffered by the client or their duly authorised representatives or assignees, and provided that the injury sustained is actually and specifically proven, then the same shall be covered by the Company's Public Liability Insurance cover.

(3) In taking part in the tours and services provided by the Suppliers, the Client shall assume all the risks associated with the same and undertake to abide by the Suppliers' code of conduct to ensure the Client's safety.

3. The Company's Rights and Obligations

- (a) Without any prejudice to the exclusion clauses provided herein, the Company will: -

- (i) take necessary efforts and take due care in engaging quality suppliers and subcontractors among the various airlines, hotels, restaurants, tour services, and any other such service providers or services constituting the itinerary for the intended tour; and
 - (ii) endeavor to ensure that the packaged itinerary is carried out efficiently and as far as possible as is it advertised;
- (b) Provide the identity of the Suppliers or any subcontractor contracted by the Company as and when the Client requests so, and provide such Supplier's terms and conditions which are independent of these terms and conditions and Clients may be required to sign indemnities with the Suppliers or subcontractors.
- (c) The above notwithstanding, the Company being a booking agent only, is not in any way directly in control or involved in the provision of these services by the Suppliers, and as such it is emphasized that the exclusion clauses shall apply accordingly as stated above.
- (d) The Company shall be at liberty to cancel tours or any booked activities if it reasonably considers the performance of the same to be impossible or rendered illegal due to an event of force majeure or any other event to the like effect.
- (e) The Company shall be at liberty to assign or transfer any of its rights and obligations without the other party's consent, and the company further reserves the right to novate any of its rights and obligations with the consent of the other parties thereto.

4. The Client's Rights and Obligations

- (a) The Client shall, upon confirmation of a booking, be required to provide the following important information, which information is imperative to the Company in case of any emergency: -
 - (i) The Client's full names and as they appear on their passports;
 - (ii) The client's full passport details;

- (iii) The client's nationality;
 - (iv) The ages of all the children that will be participating in the tour, or any other activities or services;
 - (v) Arrival and departure details of all flights including any international connecting flights details;
 - (vi) Full details, including contact details of the Client's all insurance cover (including Medical and Travel Insurance);
 - (vii) The client's family or next of kin emergency contact details;
 - (viii) The travel agent/operator's full contact details, as the case may be;
 - (ix) Any special dietary requirements or medical conditions of the Client;
- (b) Failure to provide correct and accurate information may result in client's failing to board flights or incurring additional costs to rectify the mistake, and such costs are to be borne by the client;
- (c) The Client shall acknowledge awareness of the proposed itinerary and declare that they are medically fit (good physical and mental health state) to undertake or participate in any tour or service thereof without any impediments to their health and by booking with the Company, the Client shall be deemed to have declared themselves to be medically fit to take part in the tours, services or activities;
- (d) The client must disclose any pre-existing medical conditions and the exact nature of such conditions to the Company before beginning of the tour or service and it shall be the responsibility of the client to attend to such medical conditions and consult their doctors in respect of such medical conditions as it relates to the participation in the booked activity or service thereof. By booking with the Company, the Client shall be deemed to have declared themselves to be medically fit notwithstanding their failure to disclose the foregoing information and the Company shall not be liable for any injury caused from failure to disclose such information by the Client;

- (e) The Clients are advised to carry their medication together with the prescription papers in their carry-on luggage rather than in their checked luggage;
- (f) It shall be the Client's responsibility to consult their doctors regarding applicable or recommended prophylactics and vaccinations before travelling, and the Client shall ensure that they obtain all the necessary vaccination certificates in countries they are visiting.
- (g) It is highly recommended that the clients secure comprehensive insurance cover from a reputable insurer before commencement of the tour or services and the client shall be responsible for all such insurance arrangements and fees thereto;
- (h) The client shall be responsible for all medical expenses, and in the event that the client falls ill or is injured during the tour or services as provided by the Suppliers, the client shall bear such costs and the company shall not be liable in any way;
- (i) The clients shall ensure that all the passports, visas, insurance cover, vaccination certificates and any other relevant and necessary documents are valid for the entirety of the tour or service booked;
- (j) The clients should take note that it is an immigration requirement that passports are valid 6 months after the intended departure date from the client's tour destination and if the client is passing through South Africa, then there need to be at least 2 full blank visa pages in the passport;
- (k) The clients are required to provide accurate information and have the necessary documentations;

(l) Code of Conduct:

- (i) The clients shall undertake to abide by all the instructions and comply with the code of conduct as provided by various camps or any other tour services issued by the Supplier for the entirety of the tour or service, and the Client further undertakes to abide by all the local laws and regulations;
- (ii) The client undertakes to behave with propriety and in such a manner as not to cause or be likely to cause material distress, danger or upset to any other client(s) and/or any third party or damage to property. If we, our employees,

agents or suppliers consider the client/the agent are not behaving accordingly, we reserve the right to terminate the contract and neither we nor the providers of any of the services in question will have any further contractual obligations to the client/the agent either in respect of covering any expenses, paying any compensation or refunds, or arranging for their return home; and

- (iii) When the client books with us, they accept responsibility for any damage or loss caused by the client. Full payment for any such damage or loss (reasonably estimated if not precisely known) must be paid direct at the time to the accommodation owner or manager or other supplier. If the actual cost of the loss or damage exceeds the amount paid where estimated, the client must pay the difference once known. If the actual cost is less than the amount paid, the difference will be refunded. If the client fails to do so, the client/the agent will be responsible for meeting any claims subsequently made against Tusks and Trails (together with our own and the other party's full legal costs) as a result of their actions;

- (m) The Client has the right to request for the identity of the Suppliers or any subcontractors engaged by the Company; and

- (n) The Client shall undertake to bind all their heirs, trustees, personal representatives, third parties or any other duly authorized assignees to these terms and conditions and further undertakes to indemnify, hold harmless and in express terms exempts the Company from all liabilities in whatever form and any other consequential losses including those not ordinarily in contemplation resulting from the Client's participation in any tour or services rendered by the Suppliers.

5. Bookings, Reservations and Payment Terms

- (a) The Company shall only accept bookings directly from the Client or through a duly authorized and bona fide travel agent/operator.
- (b) The Company shall only confirm any bookings made upon receipt of **25%** deposit.
- (c) Full confirmation of the booking shall be denoted by the issuance of a pro-forma invoice by the Company.

- (d) The Client shall make full payment of the services or activities booked at least **60 days** prior to the departure date (date of travel), or to the date before the tour, service, or activity commences.
- (e) If the booking is done within **60 days** of the Client's departure date, then the Client must make full payment at the time of booking and confirmation thereto.
- (f) If full payment is not made upon booking as elucidated above, the Company shall reserve the right to withhold or refuse participation in any of the booked activities or services by the Client and, the Client or the Tour Agent/Operator, as the case may be, shall be liable to full cancellation fees.
- (g) Cost quotations issued by the Company shall be exclusive of international flights, tipping, and visa costs and such quotations shall be subject to change due to excessive exchange rate, fluctuations, fuel costs, inflation, fuel costs, taxes, government regulations, and any other factor as imposed by the Supplier or the Government of Zambia or in any other authority in the particular jurisdiction the Company may operate from time to time, which factors are beyond the Company's control.
- (h) The Company shall reserve the right to notify the clients of cost changes before a booking is made and accepted.
- (i) Unless it is expressly agreed by the parties in writing, the company shall only hold a provisional booking for **14 days** where the client is required to pay a **25%** deposit upon confirmation of the booking after which the booking shall be cancelled automatically.
- (j) There shall be no provisional bookings made by the Company upon issuance of cost quotations unless it has been expressly specified by the Company.
- (k) Any service or activity, including accommodation and flights, to be booked shall be subject to availability at the time of booking and no such service or activity shall be guaranteed by the Company until confirmation of the booking has been done.

- (l) All quoted activities including road, boat and air transfers are on a per seat and shared basis, unless otherwise stated. Nevertheless, Clients wishing to book private charters or transfers are at liberty to request the same to be arranged.
- (m) The Company will only issue out tickets, vouchers, coupons, booking documentations, or any other such documents when and only when proof of full payment has been availed to the Company.
- (n) Prior to receipt of payment from the Client, the Company shall not be able to guarantee any flights because seats are usually held for a limited period before ticketing is required.
- (o) Any unused booked travel services resulting from delayed international flights or changes in flight scheduling are non-refundable and any consequential expenses incurred thereof shall be borne by the Client.
- (p) Upon confirmation of any bookings hereto, the Client acknowledges that they have read, understood and accepted all the terms and conditions as contained herein and all the Company's cancellation policies as herein contained shall be in full effect.
- (q) In the case of booking done through a tour agent or tour operator, confirmation of a booking shall entail that such agents or operators have availed these terms and conditions to the Client and the Client has been made aware of all effect of these terms and conditions, of which the Client understands and accepts thereof. The Company shall further be entitled to assume that, in such a case, the tour agent/operator has in their possession the necessary deposit, and such agent/operator may be liable for cancellation fees to the Company, as the case may be.

(r) Weight and Luggage Restrictions:

- (i) Where a client weighs over **100kg**, they shall inform the Company upon confirmation of the booking and requesting of a quotation, this is because an additional cost may be required for an extra seat on internal flights;
- (ii) The Company, or the travel agent/operator, shall confirm the luggage restrictions before booking as the same may differ from flight to flight.

It is advisable that when clients book charter flights, they use soft luggage rather than hard suitcases with wheels which might not physically fit in some charter planes.

6. Cancellation Policies

(a) If a client cancels their holiday:

- (i) A client may cancel their confirmed booking at any time prior to departure;
- (ii) If a client wishes to do so, written notification must be sent to us by email. As proof of receipt, the client must ensure they receive and retain written acknowledgement from Tusks and Trails. If a client wishes to cancel their booking, they will be charged a cancellation fee calculated as a percentage of the total holiday cost as shown below. The percentage payable depends on the date the written notification is received and acknowledge by Tusks and Trails;
- (iii) In the event of cancellation, please note that any Advance Payment made is non-refundable unless such amounts are recovered from suppliers. We shall endeavour to mitigate these to the extent we can reasonably do so;
- (iv) In the event of cancellation of part of the booking, the cancellation fee payable by the client will comprise any direct costs and fees we incur as a result of such cancellation, our reasonable administration costs of dealing with the cancellation arrangements, plus any Advance Payment which relates to the cancelled part of the holiday. We will endeavour to mitigate these costs to the extent we can reasonably do so.

Calculation of cancellation fee

The cancellation fee is calculated as follows:

Cancellation Notification Date (number of days prior to departure date)	Cancellation Fee (Percentage of total cost of holiday)
100 +	25% deposit (plus any advance payments made which can not be recuperated from suppliers)
61 - 99	30%
31 – 60	50%
15 - 30	85%
0 - 14	100%

To the extent we can mitigate these losses, the cancellation fee will be adjusted accordingly. Note in the case of a cancellation notification date which is 14 days or less prior to the departure date, the cancellation fee will be a flat 100% of the total holiday cost given the close proximity to travel and very high likelihood that we will be unable to mitigate any costs at this point. The cancellation fee will be capped at the total cost of their holiday and will never exceed this amount.

We will do our best to implement any changes to their arrangements after they have commenced, but we cannot guarantee this will be possible. In the event of such amendments being made, the client will be liable for any cancellation fee that may be applied in respect of the services originally booked, and for the costs involved in booking the revised arrangements as well as for the cost of the new arrangements themselves. It is unlikely that refunds will be paid to clients who do not complete a tour/holiday.

(b) If Tusks and Trails cancels or changes a client's holiday:

- (i) Changes to confirmed holiday arrangements sometimes have to be made. Most changes will be insignificant, and we have the right to make these. Where an insignificant change is made before departure, we will notify you (the agent or the client depending on the booking) in writing. An insignificant change does not entitle the client to cancel their holiday and no compensation is payable for insignificant changes.
- (ii) Occasionally, before departure, we may be constrained by circumstances beyond our control to make a significant alteration to any of the main characteristics of the travel services which form part of a client's confirmed booking or to any special requirements which we have accepted. All other alterations will be treated as insignificant changes.
- (iii) Significant changes are likely to include the following changes when made before departure; a change of accommodation to that of a lower official classification or standard for the whole or a major part of the time the client is away, a change of accommodation area for the whole or a major part of the time the client is away. Please note: A change affecting a stay in a hotel during a tour where the hotel itself is not the focus of the tour, does not constitute a significant change.
- (iv) Covid-19 and the action taken to manage its effects (including face masks/coverings and health passes / vaccination certificates) may have an impact on holiday arrangements for a considerable period of time. Measures may be re-introduced or changed with little or no prior notice. Any impact which such measures have on a client's holiday will not constitute a significant alteration to their contracted arrangements and will not entitle the client to cancel without

payment of the applicable cancellation fee or to receive a full or partial refund in respect of services which are not available as a result.

- (v) In the event that we have to significantly alter any of the main characteristics of a client's confirmed arrangements or accepted special requirements, we will provide the following information in writing as soon as possible: (i) the proposed alteration(s) and any impact they have on the price; (ii) in the event that the client does not wish to accept the alteration(s), details of any substitute package we are able to offer (and any price reduction where this is of a lower quality or cost); (iii) the client's entitlement to cancel their booking and receive a full refund if they do not want to accept the alteration(s) or any substitute package offered; and (iv) the period within which the client must inform us of their decision and what will happen if they don't do so.
- (vi) If the client chooses to cancel their booking, we will refund all payments the agent/the client has made to us within 14 days of the date the cancellation takes effect and terminates their contract (which is usually the date we send a cancellation invoice following receipt of their written cancellation notification). If we don't hear from the client with their decision within the specified period (having provided the above-mentioned information for a second time), we will cancel their booking and refund all payments made to us within 14 days of the effective date of cancellation as above. No compensation will be payable or other liability accepted where a change results from unavoidable and extraordinary circumstances.
- (vii) In the event that unavoidable and extraordinary circumstances which significantly affect the performance of the contracted arrangements the agent/the client will be entitled to cancel prior to departure without payment of a cancellation fee and receive a full refund of all monies paid to us (except for any previously incurred cancellation or amendment fee). Where applicable, the agent/ the client must notify us of their wish to cancel for this reason in writing. Providing we are in agreement that the agent/the client is entitled to do so in accordance with this clause, we will send a cancellation invoice to confirm the cancellation. We will notify the agent/the client as soon as possible in the event of this situation occurring.
- (viii) Occasionally, it may be necessary to cancel confirmed holiday arrangements. We have the right to terminate the clients contract and cancel their holiday in the event we are prevented from performing their confirmed arrangements as a result of unavoidable and extraordinary circumstances and we notify the agent/the client of this as soon as reasonably possible. Where we have to cancel the clients holiday in these circumstances, we will refund all monies to the client/the agent which has been paid to us within 14 days of the effective date of cancellation but will have no

further or other liability to the client/the agent including, without limitation, in respect of compensation or any costs or expenses the client/the agent incur or have incurred. We will of course endeavour to offer the client/the agent comparable alternative arrangements where possible which they may choose to book in place of those cancelled.

- (ix) We have the right to cancel if the client/the agent fail to make payment in accordance with the terms of the contract.
- (x) If we have to make a significant alteration or cancel, we will, subject to the exceptions referred to in this section, section 2 and section 6, we will pay the client such compensation (if any) as we reasonably consider appropriate in the circumstances. Compensation may not be appropriate where, for example, any alternative arrangements offered are of a higher standard to those originally booked.
- (xi) Please note, a full refund entitlement only arises where we are prevented from performing the client's contracted holiday arrangements as a result of unavoidable and extraordinary circumstances in accordance with section 2 and we exercise our right to cancel as a result. Without limitation, the client will not be entitled to a full refund and the applicable cancellation fee is likely to apply where such circumstances affect the clients ability to travel on their holiday rather than our ability to perform or provide the contracted arrangements.

7. General Terms

- (a) **Representations and warranties:** the Company shall not be bound by any representations, warranties, promises or terms not expressly contained herein or agreed by parties hereto in writing, and no implied terms shall apply hereto.
- (b) **Severability:** If any of the terms and conditions as contained herein is found to be invalid, illegal, void, unlawful and or unenforceable in themselves or by any competent authority (including courts of law), then such provisions shall be severable and shall not affect the other provisions or the validity of the Agreement, and the rest of the provisions shall continue to be in effect as if the severed provisions had never been so included.
- (c) **Force majeure:** The Company shall not be held liable for any breach or nonperformance of any part or the entire Agreement solely due to an event of force majeure.

(d) **Waiver of Breach:**

(i) no waiver of any breach hereto shall be implied by virtue of mere failure by either party to insist on strict performance of any provision of the Agreement or failure to exercise any of the party's rights and remedies entitled hereto, and such rights and obligations shall not be diminished in any way in such occurrences.

(ii) where any party waives any breach of the Agreement, which waiver can only be expressly in writing, then the same shall not be construed to be a waiver of any subsequent similar breaches.

(e) **Exclusivity of Rights:** All rights and remedies conferred on any party hereto shall be cumulative and not exclusive of each other.

(f) **Entire Agreement:** The Agreement as defined herein shall be the whole agreement binding upon the parties herein, and no other variations or amendments, written or otherwise, or any other documentations from the tour agent/operator shall be enforceable with respect to the engagement between the parties hereto, unless the same have been expressly reduced into writing and consented to by the parties hereto or their duly authorised representatives.

(g) **Third Party Rights:** Privity of contract shall apply hereto and the Contracts (Rights of Parties) Act, 1999 shall not be applicable hereto in any way.

(h) **Partnership or Agency:** No provision as contained herein shall, in any way, be construed or intended to establish a partnership or joint venture between any of the parties hereto.

(i) **Termination:**

(i) The Company shall be at liberty to terminate the Contract as it deems appropriate if the Client fails to comply with any of the terms and conditions set forth; while

(ii) the Suppliers and Subcontractors may terminate the provision of their services in accordance with their terms and conditions.

- (iii) The Client may terminate the contract, in writing, in accordance with condition 6 herein.
- (j) **Governing Law and Jurisdiction:** The governing law of the Agreement, and any disputes occasioned thereof, or in any way connected to the Agreement thereto, shall be the law of Zambia.
- (k) **Dispute Resolution:**
 - (i) Any dispute or claim whatsoever, arising out of, or in connection with the Agreement shall be resolved firstly by way of Mediation in good faith, to which the parties thereto shall agree and consent to a Mediator to preside over the dispute, and agree to share the costs thereof equally;
 - (ii) If the said Mediation fails, then the Company shall be at liberty to institute any such legal proceedings in the Courts of Law of Zambia;
 - (iii) The Company shall not be precluded from commencing any legal action in the Courts of Law of England and Wales and or any other jurisdiction where the Client or tour agent/operator has a place of business or assets, or as a matter of convenient jurisdiction.
- (l) **Acceptance of Terms and Conditions:** The terms and conditions as contained herein become fully effective upon confirmation of any booking made until such a time when the same are duly varied or otherwise terminated. Accordingly, the Company shall be entitled to assume that once a booking is confirmed, the Client has read, understood and accepted these terms and conditions as contained herein.

For **Tusk Trail Zambia Limited T/a Tusks & Trails**

Signature: _____

who warrants that he/she is duly authorised thereto

Name: _____

Date: _____

Place: _____

For **The Client**

Signature: _____

who warrants that he/she is duly authorised thereto

Name: _____

Date: _____

Place: _____