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GENERAL TERMS AND CONDITIONS

1. INTERPRETATION
   1. In these Terms and Conditions (as defined below), unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
      1. "**Affiliate**" means in relation to any Party or person, any company which at the relevant time is a subsidiary or holding company of that Party or person, or is a subsidiary of any such holding company or, with respect to any Party or person, any person directly controlling, controlled by, or under common control with, such Party or person at any time during the period for which the determination of affiliation is made;
      2. "**Agent**" means the travel agent of which the Company makes use to book and issue air tickets;
      3. "**Agreement**" means these Terms and Conditions and the Corporate Agreement, and any other annexures and/or amendments thereto, read together;
      4. "**Business Day**" means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
      5. "**Business Hours**" means the hours between 08h00 and 16h30 South African Standard Time on Business Days;
      6. "**Code Share**" means the practice whereby, pursuant to an agreement between two carriers, a particular flight operated by one of those carriers is identified by two or more distinct flight numbers, each of which shall be prefixed with the code of the other carrier, and "**Code Share Flight**" shall mean a flight operated by any of the carriers pursuant to such agreement;
      7. "**Company**" means any third party with which SAA enters into a Corporate Agreement;
      8. "**Competition Laws**" means South Africa's Competition Act, No 89 of 1998 and any other competition and anti-trust laws that may be applicable to the Parties;
      9. "**Confidential Information**" means all proprietary and confidential oral or written information relating to one Party ("**Disclosing Party**") including but not limited to intellectual property, technical information, business information, marketing and advertising strategies and methodologies, know-how, trade secrets, client lists and financial information and which is made available in connection with this Agreement to the other Party ("**Receiving Party**") or its agents, by the Disclosing Party, whether before, on or after the date of commencement of this Agreement;
      10. "**Corporate Special Rates**" means the discounts applicable to Tickets purchased by the Company as set out in the Corporate Agreement;
      11. "**Day**" means a calendar day, including a Business Day;
      12. "**Designated Airline Tickets**" means Tickets purchased by the Company for the classes as set out in the Corporate Agreement;
      13. "**Flown Revenue Band**" means a particular category level of Corporate Flown Revenue which has a lower threshold and an upper threshold (the lower threshold being included in the band in question and the upper threshold being excluded from the band in question), each of which Flown Revenue Bands are set out in the Corporate Agreement;
      14. "**Force Majeure Event**" means unpredictable adverse weather conditions, national industrial strikes (excluding strikes or labour disputes originated by or involving only the relevant Party's workforce or any part of it or the workforce of its agents or subcontractors), war, acts of God, acts of terrorism, floods, earthquakes or civil disturbance, which in each case could not reasonably be foreseen and is beyond the reasonable control of the relevant Party or its employees or agents;
      15. "**Free Tickets**" means any Ticket purchased by the Company and paid for with Voyager Miles or any other Ticket where no revenue is earned by SAA from the Company;
      16. "**Insolvency Event**" means when a Party is unable to pay its debts, becomes insolvent, is the subject of any order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction), has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets, enters into or proposes any composition or arrangement with its creditors generally or is the subject of any events or circumstances or analogous to the foregoing in the Republic of South Africa;
      17. "**Losses**" means all losses, liabilities, costs, expenses, fines, penalties, damages, claims and all related costs and expenses (including legal costs on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties;
      18. "**Corporate Agreement**" means the written agreement (relating to the granting of certain commissions by SAA to the Company) entered, or to be entered, into between the Parties;
      19. "**Parties**" means the parties to the Corporate Agreement, being the Company and SAA;
      20. "**SAA**" means South African Airways (Proprietary) Limited, registration number 1997/022444/07, a limited liability private company duly incorporated in the Republic of South Africa;
      21. "**Signature Date**" means the date of signature of the Corporate Agreement by the Party last signing;
      22. "**Staff**" means any natural person who is either an employee, consultant or subcontractor of either Party;
      23. "**Term**" means the duration of this Agreement, being the period from the Commencement Date until the date specified in the Corporate Agreement;
      24. "**Through Fare**" means the price for a Ticket purchased for an onward journey, including a sector operated by another carrier(s). By way of example, in a Ticket for a flight from Johannesburg to London with an onward journey from London to Washington DC, the Through Fare applicable includes the onward journey from London to Washington DC, which onward journey would be operated by a carrier other than SAA;
      25. "**Tickets**" means tickets for travel on flights operated by SAA;
      26. "**Total Flown Revenue**" means the aggregate rand value received by SAA for all Tickets purchased by the Company during the currency of this Agreement, including those Tickets purchased at Corporate Special Rates;
      27. "**Voyager Members**" means the members of the Voyager Programme;
      28. "**Voyager Miles**" means notional air miles accumulated by members of the Voyager Programme; and
      29. "**Voyager Programme**" means SAA's frequent flyer loyalty programme in terms of which members earn points for every Ticket purchased, which points can be redeemed for various benefits on the terms and conditions applicable to the programme from time to time.
   2. Clause headings in this Agreement and the heading of the Agreement are for convenience only and are not to be used in its interpretation.
   3. A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
   4. Unless specifically otherwise provided, any number of Days prescribed shall be determined by excluding the first and including the last Day or, where the last Day falls on a Day that is not a Business Day, the next succeeding Business Day.
   5. If the due date for performance of any obligation in terms of this Agreement is a Day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding Business Day.
   6. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
   7. The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
   8. No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.
2. previous agreements

This Agreement supersedes and replaces any and Corporate Agreements which had previously been in place between the Parties and undertakings given to or on behalf of the Parties in relation to the subject matter hereof. Should the Parties have concluded, prior to the conclusion of the Agreement (in respect of any period/s whatsoever) any arrangement which is the same as or substantially similar to the arrangement set out in this Agreement, the Corporate Flown Revenue of the Company in such previous calculation period/s shall have no bearing whatsoever on the calculation of the Company's Corporate Flown Revenue during the Term.

1. commonality of terms
   1. These Terms and Conditions govern the circumstances under which SAA grants certain commissions and discounts to one or more Companies, as more fully set out in the Corporate Agreement to be executed by SAA and such Companies.
   2. It is agreed that these Terms and Conditions, together with the Corporate Agreement, and any Annexures thereto, constitute the complete agreement between SAA and the Company regarding the subject matter detailed in the Agreement.
   3. These Terms and Conditions shall be deemed to be incorporated by reference into the Corporate Agreement. It is specifically agreed that all of the provisions contained in these Terms and Conditions will apply to the Corporate Agreement as if specifically set out therein, with such changes as the context may require in the Corporate Agreement.
   4. The Company shall, by signing a Corporate Agreement, specifically acknowledge and agree that it has read, understood and agrees to be bound by these Terms and Conditions.
   5. In the event of any conflict or inconsistency between (i) the terms, as defined, and (ii) the provisions, as contained, in these Terms and Conditions and the terms and conditions of the Corporate Agreement, the terms and conditions of the Corporate Agreement shall prevail to the extent of such conflict.
2. CESSION and ASSIGNMENT
   1. Subject to clause 4.2, neither Party may cede, assign and/or sub-contract any of its rights and/or obligations under this Agreement, whether in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
   2. SAA may cede, assign and/or sub-contract any of its rights and/or obligations under this Agreement, whether in whole or in part, to any of its Affiliates without the consent of the Company, but SAA shall notify the Company in writing of any such cession, assignment and/or sub-contracting.
3. compliance with laws and regulations
   1. In carrying out its obligations under this Agreement, the Company shall adhere to all laws, regulations and industry codes of conduct applicable thereto, and shall ensure that it has and maintains in place, and complies with, all the necessary licenses, certificates, authorisations, permits, type approvals and consents that are required in terms of any applicable laws.
   2. It is specifically recorded that SAA does not in any manner intend on contravening Competition Laws by virtue of offering the commissions and discounts to the Company in terms of the Corporate Agreement.
   3. The Company shall at its own cost (unless otherwise agreed) take all legal advice necessary to ensure that in selling the airline tickets, the Company shall not infringe any third party rights and that its actions shall be legal and in compliance with all applicable laws, regulations and/or industry codes of practice.
   4. In the event that the results of advice received by SAA or any audit conducted in terms of clause 7 reveals that there are risks of possible contravention of Competition Laws posed by the provision of the incentive commission as set out in this Agreement, the Parties shall forthwith meet to negotiate and agree on an amendment to this Agreement to mitigate against such risk and ensure compliance with the applicable Competition Laws. SAA shall have the right to unilaterally amend the terms of this Agreement should above outcome(s) indicate substantial non-compliance.
   5. The Company shall comply with the provisions of any notice that may be issued to or by SAA in terms of South Africa's Consumer Protection Act, No 68 of 2008.
   6. The Parties are cognisant of the restrictions placed upon their interaction with each other in terms of the Competition Laws and accordingly agree not to disclose to each other any information relating to their respective businesses, their markets, suppliers and/or customers that is not required in order for either Party to fulfil its obligations under this Agreement.
4. indemnities

The Company hereby indemnifies and holds SAA and SAA's employees, directors and officers harmless against all Losses of any nature whatsoever which they may sustain as a result of or attributable to –

* 1. a failure of any of the warranties or any undertakings contained in this Agreement to be true and correct;
  2. any and all claims which may be brought against SAA by any third party in respect of any loss or damage which may arise from any acts or omissions on the part of the Company in terms of this Agreement;
  3. any non-compliance with the Competition Act or other applicable law as a result of the negligence of the Company; and
  4. its staff making use of the services of SAA in terms of a Ticket purchased by the Company.

1. audits
   1. The Company consents to SAA conducting audits of its financial records, operational structures and systems when required and undertakes to assist SAA in a transparent and open manner and to provide SAA with such information as is reasonably required by SAA during the period of this Agreement to verify the Company's compliance with this Agreement and the compliance of this Agreement with all applicable laws.
   2. The Company shall allow SAA and its employees and/or agents access to the Company' records relating to SAA and shall provide SAA with such reports as is reasonably required to ensure the proper administration of this Agreement and to avoid fraudulent activity.
   3. In the event of any discrepancies in the information provided by the Company as against the information available to SAA, SAA shall have the right to appoint an independent auditor to audit the Company's sales figures and any other information relating to this Agreement. The Company shall do all such things as reasonably requested by SAA to enable SAA to carry out such audit.
2. confidentiality
   1. Each Party undertakes to keep confidential and not to disclose to any third party, save as may be required in law or permitted in terms of this Agreement, the Confidential Information, the nature, content or existence of this Agreement and any and all information given by a Party to the other Party pursuant to this Agreement.
   2. The obligation of confidentiality placed on the Parties in terms of this clause 8 shall cease to apply to a Receiving Party in respect of any information which –
      1. is or becomes generally available to the public other than by the negligence or default of the Receiving Party or by the breach of this Agreement by the Receiving Party;
      2. the Disclosing Party confirms in writing is disclosed on a non-confidential basis;
      3. has lawfully become known by or come into the possession of the Receiving Party on a non-confidential basis from a source other than the Disclosing Party having the legal right to disclose same, provided that such knowledge or possession is evidenced by the written records of the Receiving Party existing at the Signature Date; or
      4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order, to the extent of compliance with such requirement or request only and not for any other purpose,

provided that the onus shall at all times rest on the Receiving Party to establish that information falls within the exclusions set out in clauses 8.2.1 to 8.2.4.

* 1. This clause 8 shall not apply to any disclosure made by a Party to its professional advisors or consultants, provided that they have agreed to the same confidentiality undertakings, or to any judicial or arbitral tribunal or officer, in connection with any matter relating to this Agreement or arising out of it.

1. LIMITATION OF LIABILITY
   1. The Parties agree that, in the event of a breach of any of the provisions of this Agreement, the defaulting Party shall be liable to the other Party for all Losses which constitute direct and/or general damages.
   2. Subject to clause 9.3, the Parties agree that, in the event of a breach of any of the provisions of this Agreement, the defaulting Party shall not be liable to the other Party for any Losses which constitute indirect, special and/or consequential damages.
   3. Notwithstanding anything to the contrary set forth in clause 9.2 above or this Agreement in general, the Parties agree that they shall be liable to the other for –
      1. Losses which constitute indirect, special and/or consequential damages where such damages are caused by a breach of any Confidential Information undertaking; and
      2. Losses which arise out of their dishonesty or gross negligence regardless of whether such Losses arise out of contract or delict.
   4. Nothing in this Agreement shall operate so as to exclude or in any way limit either Party's liability for fraud, or for death or personal injury caused by its negligence or any other liability that may not be excluded or limited as a matter of law.
2. FORCE MAJEURE

Neither Party shall be liable to the other for non-performance (either in whole or in part) or delay in performance of their respective obligations if caused by a Force Majeure Event. While a Force Majeure Event subsists, the Party so affected shall be relieved of liability to the other for failure to perform its obligations hereunder and such obligations shall be suspended until such time as performance can be resumed (provided that the relevant affected Party could not have prevented the failure or delay by taking reasonable precautions or measures.

1. termination
   1. Either Party may terminate this Agreement in whole or in part for convenience at any time, without penalty and without cause, on not less than 30 (thirty) Days' written notice to the other Party. The Party so terminating the Agreement shall have no liability for payment of termination fees to the other Party with if this Agreement is terminated pursuant to this clause 11.1.
   2. SAA may terminate this Agreement with immediate effect on written notice to the Company if SAA discovers any form of manipulation as determined by the Office of Serious Economic Offences on the part of the Company, in which event the matter will be handed over for prosecution.
   3. Either Party ("**Aggrieved Party**") may terminate this Agreement with immediate effect if:
      1. the other ("**Defaulting Party**") commits a material breach of this Agreement and fails to remedy that breach within 10 (ten) Business Days of being notified of the breach ("**Notice Period**") and, if the Aggrieved Party so elects, the steps required to remedy it;
      2. the Defaulting Party suffers an Insolvency Event;
      3. by reason of a Force Majeure Event, the Defaulting Party is unable to perform or delays in performing its obligations hereunder for a period of 15 (fifteen) Business Days from the date of such Force Majeure Event in circumstances where the Defaulting Party could have prevented the failure or delay by taking reasonable precautions or measures); or
      4. any representation or warranty on the part of the Defaulting Party is found to be untrue in any material particular or if the Defaulting Party does anything in breach of such representation or warranty,

without prejudice to any claims which such Party may have for damages against the other.

* 1. The Aggrieved Party's remedies in terms of this clause 11 are without prejudice to any other remedies to which the Aggrieved Party may be entitled in law.
  2. Termination of this Agreement shall not affect any accrued rights of the Parties.
  3. The provisions of clause 1 and clauses 8 to 18 shall survive any termination of this Agreement.

1. general WARRANTIES
   1. Each of the Parties hereby warrants to and in favour of the other that –
      1. it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;
      2. the execution of this Agreement and the performance of its obligations hereunder does not and shall not –
         1. contravene any law or regulation to which that Party is subject;
         2. contravene any provision of that Party's constitutional documents; or
         3. conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it.
   2. Each of the representations and warranties given by the Parties in terms of clause 12.1 shall be a separate warranty and continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement.
2. DISPUTE RESOLUTION
   1. In the event of there being any dispute or difference between the Parties arising out of this Agreement, the said dispute or difference shall on written demand by either Party be submitted to arbitration in Johannesburg in accordance with the rules of the Arbitration Foundation of Southern Africa ("**AFSA**"), which arbitration shall be administered by AFSA.
   2. Any arbitration in terms of this clause 13 shall be conducted *in camera* and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
   3. This clause 13 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.
   4. Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
3. NOTICES AND DOMICILIa
   1. SAA selects as its *domicilia citandi et executandi* the following physical address and telefax number for the purposes of giving or sending any notice provided for or required under this Agreement –

|  |  |  |
| --- | --- | --- |
| **Name** | **Physical Address** | **Telefax** |
| SAA | 1 Jones Street, Airways Park | +27 11 978 2019 |
|  | O R Tambo International Airport |  |
|  | Johannesburg |  |
|  | 1627 |  |
|  | South Africa |  |
|  |  |  |
| Marked for the attention of: Head Of Market SA and Voyager | | |

* 1. A Party may change its *domicilium* or its address for the purposes of notices to any other physical address or telefax number by written notice to the other Party to that effect. Such change of address will be effective 5 (five) Business Days after receipt of the notice of the change.
  2. All notices to be given in terms of this Agreement will be given in writing and will be delivered by hand or sent by telefax. Notice delivered by hand during Business Hours will be presumed to have been received on the date of delivery. Notices delivered by telefax during Business Hours will be presumed to have been received on the date of successful transmission of the telefax. Any notice delivered or telefax sent after Business Hours or on a Day which is not a Business Day will be presumed to have been received on the following Business Day.

1. benefit of the agreement

This Agreement will also be for the benefit of and be binding upon the successors in title and permitted assigns of the Parties or either of them.

1. applicable law and jurisdiction
   1. This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.
   2. Subject to clause 13, the Parties hereby consent and submit to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg in any dispute arising from or in connection with this Agreement.
2. GENERAL
   1. **Whole Agreement**
      1. This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
      2. This Agreement supersedes and replaces any and Corporate Agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.
   2. **Variations to be in Writing**

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

* 1. **No Indulgences**

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder shall be construed to be an implied consent or election by such Party or operate as a waiver or a novation of any of the Party's rights in terms of or arising from this Agreement.

* 1. **Provisions Severable**

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other.

* 1. **Continuing Effectiveness of Certain Provisions**

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement 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.

* 1. **No Assignment**

Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either Party without the prior signed written consent of the other Party, save as otherwise provided herein.

* 1. **Exclusion of Electronic Signature**

The reference in clauses 17.2 and 17.6 to writing signed by a Party shall, notwithstanding anything to the contrary in this Agreement, be read and construed as excluding any form of electronic signature.

1. SIGNATURE

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.