

**KIPEPEO TRADING (PTY) LTD**  
(hereinafter referred to as '*the Company*')  
**TERMS AND CONDITIONS**

**APPLICATION** - All enquiries, advice, quotations or estimates addressed to, provided by or bookings or enrolment made and/or all services rendered and/or equipment supplied by or on behalf of the Company are subject to these terms and conditions (**'the Conditions'**) and the terms and conditions of various third party providers of services and/or equipment who the Company requests to render services or provide equipment for the activities (see re such suppliers below: '**Third Party Suppliers'** and '**Third Party Supplier T&C'**). Please note that even of the aforesaid liaison with the Company does not culminate in a booking or enrolment, the Conditions will apply to all enquiries addressed to and/or advice, quotations or estimates provided by or discussed with the Company.

**THE CLIENT AND AUTHORITY**- The person making such enquiries, seeking such advice, requesting such quotations or estimates or making such booking, applies for enrolment or to whom any service is rendered or equipment supplied and/or who participates in the activities presented by the Company (**'the Activities'**), is deemed to have **read, had explained (where applicable), understand and accepted** the Conditions and to have the **authority** to do so on behalf of the person, persons or group or entity in whose name or on whose behalf the enquiry is made or advice sought or estimate or quotation or reservation or enrolment is requested and/or provided and/or the person to whom the services are rendered and/or by whom the equipment is used and/or participates in the Activities (collectively referred to as **'the Client(s)'**).

**THIRD PARTY SUPPLIERS** - The Clients are provided with access to Kipepeo Farm or other the premises where the Company activities take place (**'the Farm'**) and access to and use of other services and/or equipment provided either by the Company itself or by Third Party Suppliers. Whilst the Company vets and selects the Premises and Third Party Suppliers with the utmost care and circumspection, the Company accepts **no liability** for any loss, damage, illness, harm, injury or death which any Client may suffer or claim of whatever nature it may have as a result of any act or omission on the part of or the failure of the Farm and/or Third Party Supplier and/or the equipment.

**PAYMENT AND PAYMENT TERMS** – a 50% deposit is required upon booking and full payment is required seven days before the activity commences.

**PRICE** – The Company reserves the right to amend the price quoted (**'the Price'**) if an unreasonable **time lapses** between the date the quotation is submitted to the Client and the date it is completed, signed and returned to the Company and the Deposit paid. Should it be a group booking and the **group** number deviate from the number required for the booking, the Company reserves the right to re-cost the price and raise a surcharge.

**CANCELLATION** - In the event of **Client cancelling** a booking or enrolment (which must be done by confirmed e-mail) the Company shall have the right to either claim the Deposit or to retain the Deposit and claim damages suffered by the Company. The Company **reserves the right to cancel** any booking or enrolment, in which event the entire payment will be refunded to the Client without any further obligation on the part of the Company or right of recourse by the Client. The maximum **cancellation fee**, which may be imposed in the event of a Client cancelling, is as follows:

- 4 weeks prior to the date the activity is booked for: no cancellation fee
- 3 weeks prior to the date the event is booked for: 50% of the Price
- 2 weeks or less prior to the date the event is booked for: 100% of the Price

**RESPONSIBILITY - DISCLAIMER, WAIVER AND INDEMNITY** – Clients participate in the Activities, use the equipment and travel to and from the Farm on the express condition that the Client does so entirely at their own risk. The Company and/or the associated, subsidiary and/or holding companies (as defined in the Companies Act), its members and/or officers and/or directors and/or partners and/or shareholders and/or employees and/or agents and/or independent/sub-contractors and/or suppliers and/or the owners of the aforesaid parties and/or the Farm and/or and any other person who directly or indirectly assists with the operation or management of the Farm and/or provides products and/or services to the Company (**'the Indemnified Parties'**), shall not be responsible for, and shall be **exempt from, all liability** in respect of loss (financial or otherwise), damage, accident, injury, death, harm, illness,

trauma, delay or inconvenience to any Client (which shall be deemed to include the heirs, executors, administrators or assigns of the Client), to or loss of or damage to their property including any medical expenses whatsoever, wherever, whenever and however the same may occur and whether or not arising from any act, omission, default, or negligence on the part of any of the Indemnified Parties whatsoever. Such liability will be subject to a limitation of R30,000 (Thirty Thousand Rand) per Client per Booking. The Client **indemnifies and holds harmless** the Indemnified Parties accordingly and irrevocably waives any claims as aforesaid. The Indemnified Parties shall further more not be liable for any consequential or indirect or economic loss or damage whatsoever.

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

**CONDUCT** - The Client agrees that he/she and any members of its tour party will at all times comply with the Company's or others' requirements and instructions in regard to his/her conduct and he/she will not in any way constitute a hindrance to any other participants. Please note that **no alcohol** is allowed on the Premises. The Client indemnifies and holds harmless the Company against damages suffered and/or costs incurred by the Company and/or any third party as a result of a breach of this clause.

**SPECIAL REQUESTS** - Client, who has **special requests**, must specify such requests to the Company in the enrolment form. Whilst the Company will use its best endeavours to accommodate such requests, it does not guarantee that it will.

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

**REFUNDS** - **No refunds** will be considered in any circumstances whatsoever, other than as specified under CANCELLATION above.

## **FORCE MAJEURE**

### **DEFINITION**

The parties agree that one or more of the following events, circumstances or occurrences will constitute prima facie force majeure for the purposes of the terms and conditions that govern the relationship between the parties, subject to the qualifying requirements:

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

## QUALIFYING REQUIREMENTS

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

- \* The party invoking force majeure (*'the Force Majeure Party'* - *'FMP'*) must immediately advise the other party (*'the Force Majeure Recipient'* - *'FMR'*) in writing;
- \* The Event must not be due to the fault, negligence or breach of contract on the part of the FMP;
- \* The Event must destroy the subject matter of the contract and means of performance to such an extent that performance becomes permanently impossible and NOT simply difficult, burdensome or economically onerous to carry out;
- \* The FMP uses and has used due diligence and its best commercially reasonable endeavours to overcome and/or remove and/or alleviate and/or mitigate the Event;
- \* The FMP must mitigate its own damages;
- \* The FMP must take all reasonable steps to avoid non-performance;
- \* Any steps taken by any country's government must be as a result of the Event which results in and meets any one or more of the above Qualifying Requirements;
- \* The Event must not be of a temporary nature but if it is anticipated to endure for an unreasonably long period, it will be regarded as permanent

## REMEDIES

- \* If the parties are in disagreement about the Definition or the Qualifying Requirements, the parties will apply the Dispute Resolution clause of the Conditions;
- \* If any one or more of the qualifying criteria are not met, the FMP will have the option to agree a postponement with the FMR and the contract will be performed at the postponed date or the FMP can cancel the contract and the cancellation provisions will apply.
- \* If they are in agreement that the qualifying requirements have been met, then parties will in the first instance use their best endeavours to agree on the postponement of performance of the contract and failing consensus in that regard, the FMR will use its best endeavours to reimburse the FMP all monies received from it and paid to third party service providers which it manages to recover less irrecoverable disbursements and a reasonable management and service fee.

**CONFIDENTIALITY & PRIVACY**– Subject to statutory constraints or compliance with an order of court, the Company undertakes to deal with all Client information of a personal nature on a strictly confidential basis. Furthermore, as far as the Client's personal information and special personal information is concerned, the Company will comply with all provisions of the applicable privacy legislation such as the Protection of Personal Information Act, Act 4 of 2013 [*'POPIA'*] and, in the case of residents of the European Community (*'the EC'*), the General Data Protection Regulations of 2018 (*'the GDPR'*) as detailed in the Company's Privacy Policy which is incorporated herein by reference and which you are deemed to have read, understand and agree to be bound by.

## COPYRIGHT

Any intellectual property and specifically copyright in the activities, the format and presentation is and shall remain the sole and exclusive property of the Company.

## DISPUTE RESOLUTION

Any and all dispute arising out of or in connection with the Conditions including any question regarding its existence, validity or termination, shall be dealt with as follows:

- 1 Firstly the parties will meet within 5 (five) working days of the dispute arising in an attempt to resolve the matter amicably. Failing such amicable resolution of the dispute within 5 (five) days of their meeting, they will attempt to resolve the matter by mediation – the mediator will be an independent third party mutually agreed upon and, failing such mutual agreement, a party appointed as a mediator by the Arbitration Foundation of South Africa (*'AFSA'*), which mediator must be appointed within 5 (five) days of their failing to resolve the matter amicably and the mediation itself must take place with a further 5 (five) days from the date the mediator is appointed Failing such amicable resolution of the dispute by the intervention of a mediator, the dispute must be referred to arbitration in Cape Town within two (two) days of the failure to resolve the dispute by the intervention of a mediator, which referral must be delivered in writing to and be conducted in terms of the rules of AFSA for the time being in force which rules are deemed to be incorporated by

reference into this clause. The tribunal shall consist of one (1) arbitrator to be appointed pursuant to the AFSA Rules. The arbitrator's decision shall be final and binding upon the parties and shall provide the sole and exclusive remedies of the parties. All judgment upon the award so rendered may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award or orders of enforcement. The commencement of any arbitration proceedings under this Clause shall in no way affect the continual performance of the obligations relates to the subject matter of such proceedings. All arbitration proceedings shall be in the English Language.

2 Notwithstanding the provisions of this clause, either party may bring an urgent application to any court that has jurisdiction if circumstances arise that merit such an application

**PHOTOGRAPHY** - The Company reserves the right take photos of you and your party and to use such photos and any other photos posted on social media on its website and for promotional purposes. If you wish to object to such use, please advise the company in writing prior to arrival at the Premises.

**ENTIRE CONTRACT** - The Conditions (together with all enquiries, advice, quotations or estimates addressed to, provided by or bookings made and indemnities signed and the Company's Privacy Policy) constitute collectively the entire terms of the relationship between the parties. There exist no other terms, conditions, warranties, representations, guarantees, promises, undertaking or inducements of any nature whatsoever regulating the relationship and the Client acknowledges that he/she has not relied on any matter or thing stated or presented by or on behalf of the Company or otherwise that is not included herein. The contra proferentem rule will not apply to the interpretation of the Conditions. The Company reserves the right to revise these conditions from time to time - each revision will be dated and posted on its website.

**© COPYRIGHT  
ADV. LOUIS NEL  
'LOUIS-THE-LAWYER'  
SEPTEMBER 18/19 2022**