



DIRECT TRADING TERMS AND CONDITIONS 2016

1. GENERAL TERMS AND ACCEPTANCE SIGNATURES

Between the Guest _____

and **&Beyond South Africa Travel (Pty) Ltd** (“&Beyond/ We/ Us/ Our”)

The And Beyond Group of Companies, which for purposes of this agreement will be deemed to include by means of incorporation And Beyond South Africa Travel Private Limited, And Beyond Kenya Limited, India Safari & Tours Limited or And Beyond Bhutan Limited (“&Beyond/ We/ Us/ Our”), being a luxury experiential travel company which carries on business as such throughout Africa (i.e. South Africa, Namibia, Botswana, Kenya, Tanzania and Mozambique) and South East Asia (i.e. India, Sri Lanka, Nepal and Bhutan).

1. By signature hereof the Parties agree to be bound by the Trading Terms contained in this Agreement. In the event of the Trading Terms not being signed by the Guest, the placement of any booking/s, whether by means of electronic mail or otherwise, shall be deemed to be confirmation that the Terms have been read and the Guest agrees to be bound by the terms.
2. Unless otherwise notified by &Beyond, the Trading Terms apply for the period covered by this Agreement in relation to all operational divisions of &Beyond unless otherwise indicated.
3. Addresses for legal process and notices

For the purpose of the Trading Terms, the Guest chooses the following:

Physical Address: _____

E-mail: _____

Fax number: _____

Yours sincerely

PRINT NAME: Ryan Powell

For and on behalf of &Beyond who, by signing this Agreement, warrants that he is duly authorized to give effect to this Agreement.

Please sign below and initial all pages to acknowledge and accept the Trading Terms contained in the Agreement.

Agreed and accepted by _____ on _____

“the Guest”

SIGNATURE: _____ PRINT NAME: _____ or “the Guest” who, by signing this Agreement, warrants that he/she is duly authorized to give effect to this Agreement.

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2. CONDITIONS: TOURING SERVICES

Note: Whilst &Beyond has used its best endeavours to standardise these Trading Terms, there may be instances where, with specific reference to third party supplier bookings, it may be necessary from time to time to vary the payment and/ or other terms, in which event the Guest will be notified at the time the booking is made.

2.1. GENERAL

- 2.1.1. Final itineraries will reflect the following:
 - 2.1.1.1. Accommodation;
 - 2.1.1.2. Room type(s) and specification;
 - 2.1.1.3. Meals and/ or beverages included, where and if applicable;
 - 2.1.1.4. Transfers and or transport where specified.
- 2.1.2. Itineraries may be subject to change at any time, even after issue, due to unforeseen circumstances beyond the control of &Beyond. This includes flights, Accommodation and arranged sightseeing. Every effort will be made to operate itineraries as planned.
- 2.1.3. &Beyond reserves the right to make alterations to and/ or withdraw a tour or any part of it as is deemed necessary, and to pass on to Guests any expenditures or losses caused by delays or events beyond our control. In case of any variation in pricing due to these circumstances, &Beyond reserves the right to make adjustments to the itinerary/ tour costs as necessary.
- 2.1.4. Provision for the handling of baggage by &Beyond will be as per the quotation. Weight restrictions for baggage on some routes on internal/domestic flights may apply, details of which will be provided with documentation.
- 2.1.5. Safekeeping of baggage and personal effects shall at all times remain at the Guest's risk. &Beyond will assume no liability for lost or damaged baggage.
- 2.1.6. It will be the Guests responsibility to verify with the relevant international carrier the extent of baggage restrictions which may apply.
- 2.1.7. Guests travelling with &Beyond are covered under &Beyond's medical emergency evacuation insurance cover. Should it be required to evacuate the Guest (Africa only - cover does not extend to South Asia), it shall be the Guests' responsibility to ensure that the Guest has sufficient medical and travel insurance cover in place to cover in-hospital medical expenses and associated costs once admitted to hospital.
- 2.1.8. By virtue of the fact that &Beyond sub contracts the flying services to independent operators, &Beyond cannot accept any responsibility in respect of any delay in flights and/ or any inaccuracies of flight schedules which may occur.
- 2.1.9. &Beyond reserves the right to take photographs during the operation of any tour and use them for promotional purposes. By booking a tour with &Beyond it will be deemed that Guests have consented to the use by &Beyond of any photographic image taken of them whilst on tour. Guests who prefer their images not be used should identify themselves prior to final payment to be exempted from the photography waiver clause.

2.2. PRICING

- 2.2.1. Price includes our fee for planning and arranging itineraries, handling and operational charges quoted on the current rate of exchange and tariffs and VAT at the relevant rate where applicable.
- 2.2.2. Scheduled sightseeing tours will include entrance fees where stipulated. The price will be subject to revision in event of significant changes in foreign currency, tariff rates, taxes etc.

2.3. EXCLUSIONS

- 2.3.1. Unless expressly included, all and any cost (without limitation) of obtaining passports, visas, items of a personal nature such as drinks, laundry, telephone calls, communication and excess baggage charges shall be excluded from the tour pricing.

2.4. BOOKING PROCESS

- 2.4.1. The Guest is responsible for informing &Beyond of any bookings, confirmations, booking amendments, reductions or cancellations of rooms or services in writing by e-mail or by fax to enable &Beyond to make the required itinerary arrangements. The onus of proof of delivery will rest on the Guest.
- 2.4.2. Provisional booking periods are determined by third party suppliers. &Beyond reserves the right to release reservations.
- 2.4.3. &Beyond will, at the request of the Guest in writing, attempt to extend provisional bookings. Any extension of any provisional period will, however, at all times remain the sole and unfettered discretion of third party suppliers.
- 2.4.4. It is recommended that the Guest be in possession of the required deposit payment before confirming any Reservations with &Beyond;
- 2.4.5. Upon confirmation the Guest's nationality will be required.
- 2.4.6. Confirmed reservations are invoiced with payment required as per the provisions of clause 3.2 for Independent Travellers and clause 3.2.2 for Groups. Where touring services have been booked the final invoiced amount will be inclusive of an itinerary planning and arranging fee, handling and operational fee and VAT where applicable but exclusive of the cost of obtaining passports, visas, excess luggage and items of a personal nature unless expressly included;
- 2.4.7. Confirmed Accommodation will be subject to the appropriate payment and cancellation policy as set out in clauses 3.2 and 2.4.9.6 for Independent Traveller reservations or clauses 3.2.2 and 2.4.9.8 for Group Reservations; and
- 2.4.8. A Group would be considered as 15 full paying guests or more.
- 2.4.9. Amendment, Reduction, Refund and Cancellation Policy**
 - 2.4.9.1. An amendment will refer to a change in travel/arrival date and/or an increase or reduction in number of rooms or services required, after confirmation.
 - 2.4.9.2. All amendments made will be subject to the cancellation policy.

- 2.4.9.3. Reservations held by &Beyond where no deposit has been paid or where no guarantee has been given will be cancelled by &Beyond on notice to the Guest;
- 2.4.9.4. All Amendments, Reductions, Refunds and Cancellation for Independent Travellers will be determined in the sole and unfettered discretions of the suppliers utilized in any itinerary.
- 2.4.9.5. Refunds will not be made for any missed services.
- 2.4.9.6. In the event of cancellation of a booking, &Beyond shall be entitled to retain such portion of the booking as may be prescribed by relevant consumer protection legislation (if applicable) in operation in the Country of jurisdiction where the booking is made or confirmed by &Beyond.
- 2.4.9.7. On cancellation of a confirmed FIT reservation &Beyond will be entitled to:

Between Confirmation and 46 days prior to arrival	20% of total invoice (i.e. Deposit)
Between 45 days and arrival	90% of total invoice value

- 2.4.9.8. On cancellation of a confirmed Group reservation &Beyond will, subject to the relevant provisions of the Consumer Protection Act No. 68 of 2008 (as amended from time to time), and to the extent that the provisions of said Act are applicable, be entitled to:

Between Confirmation and 121 days prior to arrival	20% of total invoice.
Between 120 and 46 days prior to arrival	50% of total invoice
Between 45 days and arrival	100% of total invoice value

- 2.4.9.9. All Amendments, Reductions, Refunds and Cancellation Policies for groups will be determined at the sole and unfettered discretions of the suppliers utilized in any itinerary
- 2.4.9.10. The Payment Policy relating to Independent Travellers refer to 3.2 and Payment Policy relating to Groups refer to 3.2.2

3. PAYMENT POLICY

3.1. GENERAL

- 3.1.1. Unless prior arrangements have been made with &Beyond the Guest shall at all-times remain solely liable and responsible for the payment of all invoices issued by &Beyond in respect Confirmed Reservations, as well as the payment of any cancellation fees due.
- 3.1.2. Payment shall be effected by electronic fund transfer into accounts as provided at time of confirmation.
- 3.1.3. It is acknowledged by the Guest that, with specific reference to touring services which are arranged by &Beyond pursuant to this Agreement, certain portions of said touring services may be exempt from VAT, whilst other portions may be subject to VAT at the standard or zero rate. To this end the Guest agrees that prices and /or the fees charged by &Beyond in respect of touring services are inclusive of VAT at the relevant rate, if applicable, but exclusive of any other taxes.
- 3.1.4. &Beyond reserves the right to request payment by credit card or PayPal to secure all short lead time bookings which have been confirmed within 7 (seven) days of travel.

- 3.1.5. Should the Guest fail to effect any payment on due date or breach any other Trading Term of this Agreement, &Beyond shall, be entitled to:
- 3.1.5.1. Cancel this agreement and take such action as may be deemed necessary to recover the full amount owing to &Beyond, and/or;
- 3.1.5.2. cancel any future bookings made by the Guest, and/ or;
- 3.1.5.3. recover from the Guest any costs incurred due to late cancellation, and/or;
- 3.1.5.4. refuse to accept any further bookings from the Guest, and/ or;
- 3.1.5.5. request payment from Guests on arrival prior to the rendering of any services, and/ or;
- 3.1.5.6. levy a charge on all overdue account balances at a rate that is equal to the quoted prime lending rate of First National Bank South Africa as published from time to time and/ or;
- 3.1.5.7. apportion credits due to the Guest and apply to any amounts which may be due to &Beyond in terms of this Agreement

3.2. INDEPENDENT TRAVELLERS

- 3.2.1. The following specific payment policy applies:

On Confirmation within 7 days	20% of invoice value
Reflecting in the account at 45 days before arrival	Remaining 80% of invoice value

- 3.2.2. In addition to the deposit payment all flights, where required would need to be paid in full.

3.3. GROUPS

- 3.3.1. The following Group Payment terms apply and exclude any other payment conditions agreed for Independent travellers. Deviations to this payment condition are agreed by exception:

Deposit due within 30 days of confirmation for reservations 1 year and greater from date of travel	20% of total invoice value
Deposits due within 14 days of confirmation for reservations less than 1 year from date of travel	
Reflecting in the account at 120 days prior to arrival	An additional 30% of total invoice value
Reflecting in the account at 90 days prior to arrival	Final 50% of total invoice value

- 3.3.2. In addition to the deposit payment all flights, where required would need to be paid in full.

4. BANKING DETAILS

- 4.1. Electronic transfers or bank drafts drawn must be in favour of the &Beyond entity as listed on the relevant invoice provided by &Beyond as these will vary per entity transacted with.
- 4.2. A copy of the deposit slip or bank draft, together with the appropriate Guest / group details, reservation number and invoice number must be faxed or emailed to the &Beyond reservations consultant being dealt with.
- 4.3. Failure to do so may result in any payments being allocated to the first booking held in the system by the Guest.

5. GUEST RESPONSIBILITIES

5.1. THE GUEST SHALL:

- 5.1.1. Provide at time of confirmation their nationality. This information is used for market data purposes;
- 5.1.2. Adhere strictly to the provisions of the Trading Terms;
- 5.1.3. Not knowingly engage in any distribution or trade practice or advertising method which will be harmful to &Beyond;
- 5.1.4. Without delay, communicate all bookings and/or cancellations to &Beyond in writing or by fax or by e-mail;
- 5.1.5. Promptly comply with any reasonable instruction given by &Beyond;
- 5.1.6. Ensure they take out comprehensive travel insurance covering them for personal effects, personal accident, medical and emergency travel expenses, cancellation and curtailment;
- 5.1.7. Ensure they have the necessary and correct passport, visa and vaccination requirements to cover all the countries into which travel is planned;
- 5.1.8. Seek medical advice regarding prophylaxis and vaccination requirements for countries and regions into which travel is planned;
- 5.1.9. Understand that in some cases their travel may take them into isolated regions and in close proximity with wildlife. Guests will be required to sign a conditions and waiver form at the time of their safari;
- 5.1.10. At time of booking provide all special requests or preferences;
- 5.1.11. The Guest is solely responsible for ensuring that all payments due to &Beyond are received timeously by &Beyond in accordance with the provisions of the trading terms

6. &BEYOND RESPONSIBILITIES

6.1. &BEYOND SHALL:

- 6.1.1. Have the responsibility of planning and arranging itineraries, provide quotations, make reservations, confirmations, invoicing and credit control relating to the Accommodation and Travel Packages;
- 6.1.2. Stipulate all Accommodation, room types, specifications, transfers provided on arrival and departure from airport to hotel and return when specified in the itinerary;
- 6.1.3. Be entitled to change flights, Accommodation and arranged sightseeing due to unforeseen circumstances after the itinerary has been issued. Should this occur &Beyond will inform the Guest. Every effort will be made to operate the tour as planned;
- 6.1.4. Make every effort to secure special requests, however these cannot be guaranteed;
- 6.1.5. Promptly supply the Guest with brochures, information and marketing collateral that the Guest may require;
- 6.1.6. On request, provide to the Guest proof of any insurance policies taken out in &Beyonds name; and
- 6.1.7. Ensure that all brochures, advertising material and other documents of whatever nature supplied to the Guest are accurate and fully comply with all applicable laws, regulations, rules and codes of practice.

7. BREACH

- 7.1.** Either Party shall be entitled, without prejudice and in addition to any rights which it may have in terms of this Agreement or in law, forthwith to cancel this Agreement or to uphold this Agreement and in either event to claim such damages as it may have suffered in the event that the other Party:
- 7.1.1.** commits a breach of any of the terms of the trading terms, and fails to remedy such breach within a period of 7 (seven) days after receipt by it of written notice from the other Party calling for such breach to be remedied; or
 - 7.1.2.** takes steps to enter into a compromise with any of its creditors or takes steps or has steps taken against it for liquidation, winding up, deregistration or judicial management; or
 - 7.1.3.** prior to or during the currency of these trading terms, commits or has committed an act of insolvency or an act which would be an act of insolvency as defined in the Insolvency Act No. 24 of 1936, as amended, if committed by a natural person; or
 - 7.1.4.** fails to satisfy any judgment taken against it and of which it is aware and fails, within 10 (ten) days of the date on which the judgment is granted or the date on which it becomes aware of the judgment, whichever is the latter, to take such steps and to continue to take such steps as may be necessary to have the judgment set aside, or, having taken such steps, fails to satisfy the judgment within 10 days after the date on which it becomes final.
 - 7.1.5.** if the Guest fails to timeously pay to &Beyond any amount due to &Beyond as set out in the trading terms, and fails to remedy such breach within a period of 3 (three) days after receipt by it of written notice from &Beyond calling for such breach to be remedied, &Beyond shall be entitled, without prejudice, to its rights in terms of the trading terms, or in law, to terminate these terms and claim such damages as it may have suffered, and to cancel any Reservations that may have already been made for the Guest.

8. FORCE MAJEURE

- 8.1.** If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under the Trading Terms for any cause beyond the reasonable control of that Party (including without limiting the generality of the a foregoing: war, civil commotion, riot, insurrection, strikes, lock-outs, fire, explosion, floods and acts of God), the Party so affected shall be relieved of its obligations hereunder during the period of that event and shall not be liable for any delay or failure in the performance of any obligations hereunder or for any loss or damages which the other Party may suffer due to or resulting from such delay or failure, provided that written notice of the inability to perform shall be given by the Party so affected within 48 (forty eight) hours of the occurrence constituting force majeure.
- 8.2.** The Party invoking force majeure shall use its best endeavours to terminate the circumstances giving rise to force majeure and upon termination of these circumstances giving rise thereto, shall forthwith give written notice thereof to the other Party.

9. DISPUTE RESOLUTION

- 9.1.** In the event of any dispute, controversy or claim (a “dispute”) as to the rights and obligations of the Parties or as to any other matter arising from or out of or that in any way

is related to the trading terms, including any question as to its existence, validity or termination, the Parties shall attempt in good faith to resolve the dispute between themselves.

- 9.2. If the Parties are unable to resolve a dispute by mutual agreement within 14 (fourteen) days after the dispute is first communicated in writing by any Party to the others, then the dispute shall be submitted to and decided by arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa, by an arbitrator agreed upon between the Parties or, failing agreement, appointed by that Foundation.
- 9.3. Unless otherwise agreed by the Parties in writing the arbitration shall be held in Sandton in the Gauteng Province of the Republic of South Africa.
- 9.4. The arbitrator shall be obliged to give in writing the reasons for any decision made by him in the course of the arbitration.

10. GENERAL

- 10.1. If any provision of the Trading Terms is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 10.2. Neither Party may, without the express written consent of the other Party, cede or delegate any of its rights and/ or obligations in terms of this Agreement.
- 10.3. Each Party shall co-operate with the other and execute and deliver to the other such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm their rights and the intended purposes.
- 10.4. No failure by a Party to enforce any provision of the Trading Terms shall constitute a waiver of such provision or affect in any way a Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.
- 10.5. No party, nor the trustee, provisional liquidator, liquidator, provisional judicial manager, or judicial manager of any party, may cede any of its rights or delegate any of its obligations under the Trading Terms.
- 10.6. Each party warrants that he is acting as a principal and not as a Guest for an undisclosed principal.

11. ADDRESSES FOR LEGAL PROCESSES AND NOTICES

- 11.1. Any legal process to be served on either of the Parties may be served on it at the address specified for it in page 1 and it chooses that address as its domicilium citandi et executandi for all purposes under the Trading Terms.
- 11.2. Any notice or other communication to be given to either of the Parties in terms of the Trading Terms shall be valid and effective only if it is given in writing, provided that any notice given by facsimile or electronic mail shall be regarded for this purpose as having been given in writing.

11.3. Either Party may by written notice to the other Party change to any other address (other than a post office box number) provided that the change shall become effective on the 7th (seventh) day after the receipt of the notice.

12. COSTS

All and any costs incurred by either Party arising out of or in connection with a breach of any of the provisions of the trading terms by the other Party, including but not limited to legal costs on the attorney and own Guest scale, shall be borne by the Party in breach.

13. SEVERABILITY

All provisions of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this Agreement which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

14. CESSION

14.1. &Beyond shall be entitled, without the consent of the Client, to cede, delegate or assign all or any of its rights and/or obligations under this Agreement to any affiliate within the And Beyond Group of Companies (“the Cessionary”), or a nominee elected by &Beyond.

14.2. On any cession, assignment and/or delegation taking place in terms of clause 14.1, the Client shall, if so required by any Cessionary, make all payments to such Cessionary.

14.3. The Client shall not, without the written consent of &Beyond, be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under this Agreement to any third party.

15. ENTIRE AGREEMENT

The covering letter and Trading Terms, read with the applicable confirmation and the relevant Guest agreement in respect of each Reservation, contains the entire agreement between the parties and &Beyond shall not be bound by any representation, warranties, undertakings, promises or the like (whether or not made by &Beyond, its companies or servants) which are not recorded therein. Subject to the provisions, no alternation, variation or cancellation by agreement of, amendment or addition to, or deletion from this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

16. GOVERNING LAW

The terms and conditions of this Agreement shall be governed by, and shall be construed in accordance with the laws of the Country of domicile of the relevant &Beyond legal entity through which the booking for Accommodation is made or facilitated.

17. COUNTERPARTS

This Agreement may be executed in counterparts, each of which will be deemed to be an original of this Agreement with the same force and effect. A facsimile or photocopy of a fully executed counterpart of this Agreement, or of a set of identical versions separately executed by the Parties, will be valid evidence of the existence and the terms of this Agreement.

18. DEFINITIONS

18.1. DEFINITIONS FOR THE PURPOSES OF THIS AGREEMENT, UNLESS THE CONTEXT REQUIRES OTHERWISE SHALL BE AS FOLLOWS:-

- 18.1.1. "Accommodation" means collectively Accommodation at any of the &Beyond Lodge and Camps and the provision of third party services (where relevant) reserved by &Beyond;
- 18.1.2. "Booking Amendments" means any change required by the Guest in the travel and/ or arrival date, any increase or reduction in the number of rooms booked, and/ or any services required after the date of Confirmation;
- 18.1.3. "the/ this Agreement" means the trading terms contained in this agreement as amplified by the provisions of any Annexure attached hereto;
- 18.1.4. "&Beyond Lodges and Camps" means collectively those lodges owned and/ or operated by &Beyond including Under Canvas and mobile expedition products;
- 18.1.5. "Guest" means customer;
- 18.1.6. "Parties" means collectively &Beyond and the Guest, and "Party" means either of them as the context may require;
- 18.1.7. "Rates" means the rates for the Accommodation as set out by &Beyond in its then current rate documents, as substituted and sent to the Guest from time to time;
- 18.1.8. "Reservation" means a reservation made by the Guest and confirmed by &Beyond in writing;
- 18.1.9. "Confirmation" means written confirmation by the Guest confirming that the reservation will be honoured and guaranteed;
- 18.1.10. "Tours and Tour Series" means a pre-arranged tour being organised, marketed and sold to the Guest prior to commencement which may be single or multiple dates/ departures;
- 18.1.11. "Independent Travellers" shall mean 14 (fourteen) full paying Guests or less per reservation;
- 18.1.12. "Group" and "Group Reservations" shall mean 15 (fifteen) full paying Guests or more per reservation;
- 18.1.13. "Trade Marks" shall mean any registered trademarks registered in the name of &Beyond, (including any pending trade mark applications), as amended from time to time at the instance of &Beyond and includes the well-known international common law mark, namely "&BEYOND" and its associated logos (notably: of the bateleur eagle) and stylized wording, &Beyond being authorised to license the use of these Trade Marks for purposes of this Agreement; and
- 18.1.14. "VAT" means Value Added Tax or any similar consumption tax payable in any country.