

TERMS AND CONDITIONS

These terms and conditions form the basis upon which Blackbark Productions CC ("**Blackbark**") agrees to provide you, the Client, with its Services.

It is important to Blackbark that you, as the client, are comfortable with the terms and conditions contained below and that you understand both what can be expected from us and, in return, what we require from you in order to supply the required Services.

Please carefully read the Agreement, particularly the terms in bold, completing the Booking Form.

On submission of the Booking Form you acknowledge that:

- i. You have understood all the terms and conditions contained in the Agreement;**
- ii. that any queries you may have had regarding the Agreement have been dealt with in full; and**
- iii. you understand the rights and obligations created by this Agreement.**

1. DEFINITIONS

1.1. In these terms and conditions, unless clearly otherwise indicated:

- 1.1.1. "**Agreement**" means these terms and conditions and the Booking Form (as defined);
- 1.1.2. "**Blackbark**" means Blackbark Productions CC, a close corporation bearing CK number (2010/128051/23) with registered address at Harry Goemans Centre, 150 Main Road, Bergvliet, Cape Town;
- 1.1.3. "**Booking Form**" means either the physical or electronic document supplied to the Client which details the particulars of the Services to be rendered and the total quoted cost thereof;
- 1.1.4. "**the Client**" means the natural or juristic persons as they appear on the Booking Form and any duly authorised employee, representative and/or agent;
- 1.1.5. "**the Event**" means the occasion to which the Services relate, as specified on the Booking Form;
- 1.1.6. "**Quotation**" means the document sent to the client detailing estimated total cost of the Services, exclusive of VAT;
- 1.1.7. "**the Services**" means the event booking, hosting and marketing services to be provided by Blackbark to the Client, as more fully set out on the Booking Formed between the parties in writing;
- 1.1.8. "**Venue**" means the premises set out in the Booking Form at which the Event shall be held.
- 1.1.9. "**Website**" means www.blackbark.co.za;

- 1.2. clause headings are for the purposes of convenience and reference only and shall not be used in the interpretation of, nor modify nor amplify, any of the provisions of this Agreement;
- 1.3. a reference to:-
 - 1.3.1. any particular gender shall include all other genders which the Parties may identify as;
 - 1.3.2. the singular shall include the plural and vice versa;
 - 1.3.3. a natural person shall include a juristic person (whether a corporate or unincorporated created entity) and vice versa;
- 1.4. all of the annexures to this Agreement are to be read as if specifically incorporated and will have the same force and effect as if they were set out in the body of this Agreement;
- 1.5. words and/or expressions defined in this Agreement bear the same meanings in any annexures which do not contain their own defined words and/or expressions;
- 1.6. where a period consisting of a number of days is prescribed, it shall be determined by excluding the first and including the last day;
- 1.7. If any clause specifies an act will be performed on a day other than a Business Day, the Parties will be deemed to have intended to perform said act on or by the first subsequent Business Day;
- 1.8. where an expression has been defined (whether in this clause 2 or elsewhere in this Agreement) and the definition contains a provision conferring rights or imposing obligations on either Party, the provision will have the same effect as a substantive provision contained in the body of this Agreement;
- 1.9. if figures are referred to in numerals and words, the words will be definitive in the event of any conflict between the two;
- 1.10. words and/or expressions defined in any particular clause in the body of this Agreement shall, unless the application of such word and/or expression is specifically limited to that clause, bear the meanings so assigned to it through this Agreement;
- 1.11. the *contra proferentem* rule shall not apply and accordingly none of the provisions hereof shall be constructed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision;
- 1.12. the *eidusdem generis* rule shall not apply and whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned;
- 1.13. a reference to any statute will be interpreted as a reference to that enactment as at the Signature Date and as amended or re-enacted from time to time thereafter;
- 1.14. the expiration or termination of this Agreement will not affect the below provisions which expressly provide for continuing application after expiration or termination;

- 1.15. any communication which is required to be "in writing" shall include a communication which is written or produced by any substitute for writing or which is partly so produced, and shall include printing, typewriting, lithography, facsimile or electronic mail or any form of electronic communication or other process or partly one and partly another.

2. PAYMENT TERMS

- 2.1. Upon submission of the Booking Form, Blackbark shall generate and issue an invoice to the Client by email.
- 2.2. All invoices issued by Blackbark shall be payable within 30 (thirty) days of presentation to the Client.
- 2.3. The Client undertakes to pay all amounts owed to Blackbark without deduction or set-off and as and when they fall due for payment.
- 2.4. The Client agrees that interest shall be payable to Blackbark at the maximum legal interest rate prescribed in terms of the National Credit Act on any amounts in arrears, and that interest shall be calculated daily and compounded monthly from the date of acceptance of the Quotation.
- 2.5. In the event that Blackbark is forced to approach a court to recover any amounts due to it under this Agreement, the Client agrees that it shall be liable to Blackbark for all legal expenses incurred by Blackbark on the attorney-and-own client scale.
- 2.6. The Client agrees to pay any further additional costs invoiced to it, resulting from any acts, omissions or special requests of the Customer including disbursements or costs relating to the suspension of work, modifications of Service requirements, failure or delay in giving particular requisite authority to confirm the Booking by the Event Date.
- 2.7. IN THE EVENT THAT BLACKBARK BECOMES AWARE OF ANY WILFUL MISCONDUCT, UNLAWFUL ACT OR GROSS NEGLIGENCE BY THE CLIENT DURING THE EVENT WHICH GIVES RISE TO A CLAIM BY A SUPPLIER OF BLACKBARK, THE CLIENT AGREES THAT BLACKBARK SHALL BE ENTITLED TO RAISE AN INVOICE AND CLAIM FROM THE CLIENT, THE REASONABLE AND ACTUAL COST OF ANY EQUIPMENT OR FIXTURES OF THE VENUE WHICH ARE DESTROYED, LOST OR DAMAGED.**
- 2.8. All invoices shall be payable via electronic funds transfer (EFT) to the following bank account:

INSERT ACCOUNT DETAILS

3. EVENT CANCELLATION TERMS

- 3.1. Blackbark reserves the right to cancel the Client's booking unilaterally and without further notice, should payment of any invoice remain outstanding 24 (twenty-four) hours prior to an Event.
- 3.2. The Client agrees to provide Blackbark with accurate and timeous instructions on the Booking Form. Blackbark reserves the right to unilaterally cancel this Agreement in the event that the Client has not provided the required details 24 (twenty-four) hours prior to an Event.

- 3.3. The Client agrees that any booking for the Event is subject to cancellation by Blackbark due to Acts of God, or from any cause beyond the control of Blackbark, including (without restricting this clause to these instances): inability to secure labour, power, materials or supplies, or by reason of an Act of God, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, pandemic, flood, drought or legislation.
- 3.4. The Client agrees that Blackbark may, in its sole and unfettered discretion:
 - 3.4.1. issue a notice to cancel the Event, after due consideration of the viability of the Event based on the prevailing market conditions; and
 - 3.4.2. allocate a portion or the entirety of the Client's booking fee amount to a suitable alternative marketing campaign or initiative.
- 3.5. Should the Client deliver a notice to Blackbark to cancel its booking, the Client agrees that Blackbark shall be entitled to charge:
 - 3.5.1. a 10% cancellation fee when cancelling within 48 hours of accepting the Quotation;
 - 3.5.2. a 25% cancellation fee when cancelling a booking between 10 and 6 weeks prior to the Event;
 - 3.5.3. a 50% cancellation fee when cancelling a booking between than 4 and 6 weeks prior to an event.
 - 3.5.4. a 100% cancellation fee when cancelling an event less than 4 weeks prior to the commencement time of an Event.

4. LIMITATION OF LIABILITY

- 4.1. The Client acknowledges that it does not rely on any representations made by Blackbark in regard to:
 - 4.1.1. its Services;
 - 4.1.2. expertise; or
 - 4.1.3. event specifications, price lists, advertisements, brochures and other technical data furnished by Blackbark in respect its Services, whether orally or in writing and will not form part of this Agreement.
- 4.2. THE CLIENT, THEIR REPRESENTATIVES, GUESTS, EMPLOYEES AND/OR THIRD PARTIES ATTEND THE EVENT AT THEIR OWN RISK AND INDEMNIFIES BLACKBARK FOR ANY DAMAGE, PERSONAL INJURY, DEATH AND/OR CLAIM OF WHATSOEVER NATURE CAUSED OR BROUGHT ABOUT AS A RESULT OF THEIR ATTENDANCE AT THE EVENT.**
- 4.3. The Client agrees that any damages caused to the assets of Blackbark's suppliers as a result of its wilful misconduct or negligence when in attendance at the Event will attract full liability. The Client agrees that it shall not hold Blackbark liable in any manner whatsoever for such damages.

4.4. Blackbark shall not be liable to the Client for any loss of profits, contracts and/or other indirect loss however caused.

5. BREACH

5.1. In the event of either party not meeting its obligations under the Agreement, the innocent party shall be entitled to deliver notice in writing, 7 business days prior, of its intention to:

5.1.1. cancel the Agreement; or

5.1.2. or demand that the other party's obligations in terms of the Agreement are complied with.

5.2. Should the Client commit an act of insolvency, be placed in liquidation, sequestration or be placed under business rescue, Blackbark shall be entitled to cancel this Agreement immediately and levy a 100% cancellation fee.

6. USE OF BLACKBARK WEBSITE

6.1. Blackbark permits the use of www.blackbark.co.za subject to these terms and conditions.

6.2. By accessing the Website in any way, the website user ("user") shall be deemed to have accepted all the Terms and Conditions unconditionally.

6.3. Use of the Website at the users' own risk.

6.4. The user will not hold Blackbark liable for any payment and or submission of information made through the use of the Website.

7. DIRECT MARKETING

7.1. The Client, its employees and representatives authorise Blackbark to process their personal data in terms of the Protection of Personal Information Act 4 of 2013 ("POPI").

7.2. The Client specifically authorises Blackbark to make use of the personal information supplied to it for the purposes of promotional campaigns and targeted marketing;

7.3. The Client acknowledges that Blackbark shall process a withdrawal of its, its employees' and representatives' consent in terms of clause 7.2 above should it receive an instruction to do so, in writing, from the person to whom the communication is addressed.

7.4. Blackbark will process the Client's data in accordance with its POPI policy, a copy of which is available on request.

8. NOTICES AND LEGAL

8.1. Any notice required to be given in writing in terms of the Agreement will be deemed to have been given if delivered by hand, or by email to the chosen address and/or contact details of the party in question, stipulated on the Booking Form.

8.2. The Agreement will be governed in accordance with the laws of the Republic of South Africa.

8.3. Any dispute arising from the Agreement will be determined by the Magistrates Court of South Africa having jurisdiction in the circumstances, irrespective of whether the amount in dispute exceeds the limit of the court as determined from time to time.

9. GENERAL RIGHTS AND OBLIGATIONS

9.1. Severability

If any provision of this Agreement, 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.

9.2. Entire Agreement

9.2.1. This Agreement constitutes the entire Agreement between the Parties with regard to its subject matter.

9.2.2. Neither of the Parties shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Agreement.

9.3. Variations

No Agreement to vary, add to or cancel this Agreement shall be of any force or effect unless recorded in writing and signed by or on behalf of all the Parties.

9.4. Assignment

Save as permitted by the provisions of this Agreement, no Party may cede any of its rights or delegate any of its obligations under this Agreement.

9.5. General Co-operation

The Parties shall co-operate with each other and execute and deliver to the other Parties 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 purpose of this Agreement.

9.6. Survival of Rights, Duties and Obligations

Termination of this Agreement for any cause shall not release any Party from any liability which at the time of termination has already accrued to the other Parties or which thereafter may accrue in respect of any act or omission prior to such termination.

9.7. Non-waiver

No extensions of time, acts of relaxation, indulgences, periods of grace or any other act on the part of Blackbark, whereby it has in any one or more particular instance not insisted upon the due, punctual and faithful performance of any obligations undertaken by the Client, shall, notwithstanding that same may have been repeated on a number of occasions and irrespective of the number of occasions upon which the same shall have been granted, in any way whatsoever operate as, or be deemed to be a waiver, or give rise to an estoppel, or to the invocation of the 'exceptio doli' on the part of Blackbark in respect of any of its rights in terms hereof.

9.8. Jurisdiction

The Parties agree that any legal action or proceedings arising out of or in connection with this Agreement, notwithstanding the value of the claim, shall be brought in the Magistrates Court with appropriate geographical jurisdiction.