



WEAREAFRICA

## EXHIBITOR TERMS AND CONDITIONS

### 1. DEFINITIONS

In these Terms:

- 1.1. "Buyers" means individuals attending the Exhibition, who shall include travel agents, journalists, travellers and others;
- 1.2. "Commencement Date" means the date of commencement of the Contract in accordance with clause 2.1;
- 1.3. "Contract" means the contract between the Exhibitor and We Are Africa (Pty) Ltd in respect of the allocation of Space to the Exhibitor at the Exhibition in accordance with the Invitation and these Terms;
- 1.4. "Deposit" means a sum equal to 35% of the Fee;
- 1.5. "We Are Africa" means We Are Africa (Pty) Ltd, a company registered in South Africa with number 2019/283798/07, being the company operating the Exhibition in South Africa under license from We Are Africa Shows Ltd;
- 1.6. "Exhibition" means the We Are Africa event, taking place from 18 - 21 May 2020 in Cape Town and surrounds;
- 1.7. "Exhibitor" means the person and /or company whose details are set out in the Invitation;
- 1.8. "Fee" means the charges payable by the Exhibitor as specified in the Invitation;
- 1.9. "First Release Rate" means a discount of 20% on the Fee;
- 1.10. "Force Majeure" means any circumstances beyond the reasonable control of We Are Africa including but not limited to any acts of god, epidemics, pandemics, swine flu, fires, explosions, earthquakes, floods, volcanic eruptions, ash clouds, storms, tempest, lightning, strikes or lockouts, riots, protests, civil commotions, war, rebellion, or harmful acts for political, terrorist or other similar purposes, biochemical attacks, cyber-attacks, national mourning, material emergency, terrorist or military activity, labour disputes, airlines disturbances, civil disturbances, explosions, inevitable accident, interventions or regulations;
- 1.11. "GBP" or the "£" symbol means Great British Pounds
- 1.12. "Guide" means the Exhibitor manual made available by We Are Africa to the Exhibitor at least 4 weeks prior to the start of the Exhibition;
- 1.13. "Invitation" means the offer to the Exhibitor to exhibit at the Exhibition as set out in the booking form signed by the Exhibitor;
- 1.14. "Meeting Table" means the table and 3 chairs allocated to the Exhibitor as specified in the Invitation;
- 1.15. "Official Evening Functions" means those functions organised or arranged as such by We Are Africa as part of the Official Programme;
- 1.16. "Official Programme" means the programme of events organised or arranged by We Are Africa to take place during the Exhibition, details of which shall be made available at least 2 weeks prior to the start of the Exhibition;

- 1.17. "Parties" means We Are Africa and the Exhibitor;
- 1.18. "Private Event" means an event arranged by an Exhibitor for Buyers;
- 1.19. "Rules & Regulations" means the rules of the Venue where the Exhibition is taking place and provided to the Exhibitor from time to time;
- 1.20. "Second Release Rate" means a discount of 10% on the Fee;
- 1.21. "Space" means the space allocated to the Exhibitor as specified in the Invitation;
- 1.22. "Stand" means the stand and Space allocated to the Exhibitor as specified in the Invitation;
- 1.23. "Terms" means these terms and conditions;
- 1.24. "Venue" means the site at which the Exhibition is to be held.
- 1.25. "VAT" means Value Added Tax
- 1.26. "ZAR" and the "R" symbol means South African Rand;

## **2. ENTIRE AGREEMENT**

- 2.1. The Invitation constitutes an offer to the Exhibitor to exhibit at the Exhibition in accordance with these Terms. The Invitation shall only be deemed to be accepted (at We Are Africa's absolute and sole discretion) when We Are Africa issues written acceptance of the Invitation, at which point and on which date the Contract shall come into existence (the "Commencement Date").
- 2.2. The Contract constitutes the entire agreement between the Parties, superseding any previous agreement or understanding. All other terms, expressed or implied by statute or otherwise, are excluded to the fullest extent permitted by law from the Contract.
- 2.3. Any changes or additions to the Contract shall only be binding when agreed in writing and signed by We Are Africa. We Are Africa may, from time to time, vary or amend the Contract by notice in writing to the Exhibitor provided that such variations or amendments shall not operate to diminish the rights reserved to the Exhibitor under the Contract or to increase the liabilities of the Exhibitor or We Are Africa.

## **3. FEES**

- 3.1. The Exhibitor shall pay the Fee for the provision of the space by We Are Africa in accordance with this clause 3.
- 3.2. Subject to clause 3.3 below, We Are Africa shall invoice the Exhibitor in full for the Deposit on the Commencement Date or as soon as possible thereafter. The 35% deposit is due on or before the 30 September 2019. The balance of the Fee is to be paid shall be invoiced no later than 120 days prior to the start of the Exhibition (18 January 2020).
- 3.3. If the Commencement Date is less than 120 days prior to the start of the Exhibition, We Are Africa shall invoice the Exhibitor the full amount of the Fee on the Commencement Date or as soon as possible thereafter and payment of the fee will be required within 3 working days of the date of the invoice.
- 3.4. All invoices will be payable by the Exhibitor within 10 working days of the date of the relevant invoices and subject to Value Added Tax at the prevailing rate. However, if the

Commencement Date is less than 120 days prior to the start of the Exhibition, payment of the Fee will be required within 3 working days of the date of the invoice.

- 3.5. International Exhibitors who are invoiced outside of South Africa's borders will be receive their invoices in GBP converted at a fixed rate of 17.5 ZAR to 1 GBP and will pay into the nominated bank account in the UK.
- 3.6. ALL fees and prices quoted in the booking form and contract exclude VAT and We Are Africa reserves the right to levy VAT on all invoices at the prevailing rate.
- 3.7. The Exhibitor shall not be permitted to exhibit at the Exhibition unless payment in full and in cleared funds has been made of the Fee prior to commencement of the Exhibition
- 3.8. The First Release Rate will be limited to the first 215 properly executed contracts received by We Are Africa. To qualify for the First Release Rate, the Deposit must be paid by 30 September 2019 and the final balance of the Fee must be paid by 18 January 2020. If either of these deadlines is not met, the Exhibitor will be automatically re-invoiced at the maximum rate of their selected package as set out in the Invitation, and the outstanding balance will be required within 3 working days of the date of the invoice.
- 3.9. The Second Release Rate will be limited to the next 100 properly executed contracts received by We Are Africa, after the 215 First Release Rate contracts have been secured. To qualify for the Second Release Rate, the Deposit must be paid within 30 days of invoicing and the final balance of the Fee must be paid by 18 January 2020. If either of these deadlines is not met, the Exhibitor will be automatically re-invoiced at the maximum rate of their selected package as set out in the Invitation, and the outstanding balance will be required within 3 working days of the date of the invoice.
- 3.10. There are fixed numbers of each package type available within each rate tier and these will be allocated on a first come, first served basis.
- 3.11. Additional Delegate Badges are available exclusively to confirmed Exhibitors at a cost of ZAR 24,599 plus VAT per person. Additional Delegate Badges are nominative, subject to approval by We Are Africa and not transferrable, unless by prior written permission from We Are Africa.
- 3.12. All payment of Fees must be by bank transfer to the nominated account of We Are Africa and no payment will be accepted by cheque. Credit Card payment, if requested by the Exhibitor and agreed, will be accepted subject to additional fees.

#### **4. CANCELLATION AND AMENDMENTS**

- 4.1. We Are Africa shall be entitled to cancel the Contract if it considers, in its reasonable discretion, that the products or services provided by the Exhibitor or any person sharing the Stand do not fit with the profile or the particular standards of the Exhibition, and in particular with the requirements set out in the Guide or the Rules & Regulations. We Are Africa shall not be required to reimburse any part of the Fee already paid by the Exhibitor, other than if

We Are Africa is able to fill the place of such cancelled Exhibitor and We Are Africa would suffer no loss through reimbursement.

- 4.2. We Are Africa shall be entitled to cancel the Contract if the deposit has not been received within 30 days of invoicing. In the event of such cancellation, We Are Africa reserves the right to reclaim and release the package as set out in the Invitation.
- 4.3. The Exhibitor may cancel the Contract in its entirety or reduce its Space requirements by giving notice in writing to We Are Africa. If such notice is received by We Are Africa at least 120 days prior to the start of the Exhibition, the Exhibitor will only be liable for the 35% Deposit or that part of the Deposit paid in the same proportion to the Space required compared to the Space required in the Invitation. Where such notice is received by We Are Africa less than 120 days prior to the start of the Exhibition, the Exhibitor shall remain liable for the Fee in full. Once the show dates have commenced refunds are unavailable and Exhibitors will be 100% liable for the Fees.
- 4.4. The Exhibitor may cancel an additional delegate badge order by giving prior notice in writing to We Are Africa at least 30 days prior to the start of the Exhibition without penalty. Where such notice is received by We Are Africa less than 30 days prior to the start of the Exhibition, the Exhibitor will be liable for 50% of the cost of the badge.
- 4.5. Identification changes to registered additional delegates may be made by the Exhibitor, under stipulation they must be made in writing to Event We Are Africa at least 14 days prior to the start of the Exhibition. Where such notice is received by We Are Africa less than 14 days prior to the start of the Exhibition, the Exhibitor will be charged an administration fee of ZAR 3,399 plus VAT per change.
- 4.6. We Are Africa shall not be required to assist the Exhibitor to obtain any documents necessary for entry into the country where the Exhibition is to be held. Any failure by the Exhibitor to obtain any such documents from the relevant authorities shall not constitute frustration of the Contract or enable the Exhibitor to terminate or cancel the Contract otherwise than on the Terms herein stated.
- 4.7. Either Party may (without limiting any other remedy) terminate the Contract with immediate effect by giving written notice to the other Party if:
  - 4.7.1. the other Party commits any breach of any term of the Contract and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so; or
  - 4.7.2. if the other Party (being a corporation or other corporate entity) goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed; or
  - 4.7.3. in the event of death or insolvency of either Party (being an individual).

4.8. On termination of the Contract in accordance with this clause 4.7, the Exhibitor shall immediately pay to We Are Africa all of We Are Africa's outstanding and unpaid invoices and any other amounts due pursuant to the Terms herein stated.

## **5. CONDUCT OF EXHIBITOR**

5.1. The Exhibitor has no right to occupy any particular space, although We Are Africa will endeavour to take into account the Exhibitor's preferences when allocating space at the Exhibition.

5.2. The Exhibitor has a duty to keep its Stand clean and tidy at all times. If the Exhibitor fails to do so, We Are Africa will charge an additional fee to cover the cost of having the cleaning done.

5.3. The Exhibitor shall:

5.3.1. comply with all relevant laws, statutory regulations, the Guide, Rules & Regulations, relevant health & safety legislation and Venue guidelines;

5.3.2. comply with all reasonable instructions of We Are Africa or the operator of the Venue;

5.3.3. ensure that its authorised representative is present and available at the Stand at all times when the Exhibition is open;

5.4. The Exhibitor shall not:

5.4.1. assign any of its rights under the Contract, or share, sub-let or grant licenses in respect of the whole or any part of the Stand;

5.4.2. remove or dismantle any part of its exhibit from its Stand prior to the official closure of the Exhibition;

5.4.3. obstruct the view of adjoining exhibits nor operate in any manner intrusive or damaging to other Exhibitors, including, without limitation, unreasonable use of light and noise;

5.4.4. display or distribute any political, illegal, immoral or offensive material at the Exhibition;

5.4.5. conduct any lotteries, games of chance or raffles or

5.4.6. use audio, lighting or audio-visual equipment without the prior written consent of We Are Africa;

5.4.7. remove any stand graphics from the Venue once the Exhibition has ended: such stand graphics shall remain the property of We Are Africa and will be reused the next year or recycled.

5.5. The Exhibitor shall pay to We Are Africa forthwith, upon demand, the costs of making good all damage to the Exhibitor's Stand(s) suffered during the Exhibition, other than damage caused by We Are Africa.

5.6. The Exhibitor may host Private Events during the Exhibition, with the consent of We Are Africa in writing and provided that:

5.6.1. the number of Buyers attending does not exceed 20 Buyers and Press; and

5.6.2. the Private Event does not clash with the Official Programme.

If the Exhibitor hosts a Private Event that clashes with the Official Programme or that has more than 20 Buyers and Press attending, it will have its registration(s) revoked and will be refused entry to the Exhibition including all business and social events in the Official Programme.

5.7. The organisation of Private Events is not the responsibility of We Are Africa and We Are Africa cannot facilitate entry or access to any of those events. We Are Africa accepts no responsibility or liability for any loss or damage arising directly or indirectly as a result of any Private Event which events are either undertaken and/or attended by the Exhibitor at its own risk.

5.8. Family members, life partners, junior staff and non-delegates are prohibited from attending any of the Official Evening Functions or the Exhibition other than as officially designated delegates.

5.9. The Exhibition is for senior management only - director level and above. We Are Africa reserves the right to refuse entry to the Exhibition to any junior staff.

## **6. INDEMNITY**

The Exhibitor shall indemnify and hold harmless We Are Africa on a continuing basis against any loss, damages, costs, expenses or other claims arising from:

6.1. breach of any term of the Contract by the Exhibitor;

6.2. acts or omissions of the Exhibitor, its officers, employees, agents or sub-contractors, whether negligent or otherwise;

6.3. the claims of any third party arising from the acts or omissions of the Exhibitor, its officers, employees, agents, sub-contractors or any person sharing the Stand, whether negligent or otherwise; and

6.4. any Private Events hosted by the Exhibitor during the Exhibition.

- 7. LIMITATION OF LIABILITY - The Exhibitor's attention is particularly drawn to this clause**
- 7.1. Except in respect of death or personal injury caused by negligence or as expressly provided in these Terms, neither We Are Africa nor its contractors engaged on arranging the Exhibition shall be liable to the Exhibitor by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or in delict (including without limitation negligence) or any duty at common law, or under the express terms of the Contract or otherwise howsoever for any loss or damage incurred by the Exhibitor, whether for loss of profits, indirect, consequential or special loss, costs, expenses or other claims which arise from or in connection with the Exhibition, including but not limited to claims relating to:
- 7.1.1. any delay or cancellation of the Exhibition;
  - 7.1.2. any loss occurring as a result of an act of Force Majeure;
  - 7.1.3. any loss in relation to the movement of freight to and from the Venue; or
  - 7.1.4. any loss caused by fire, accident or theft of any nature.
- 7.2. Subject to the remainder of this clause 7, We Are Africa's total liability to the Exhibitor shall in no circumstances exceed the Fee.
- 7.3. If the Exhibition is cancelled, postponed, abandoned or curtailed, or the Venue becomes wholly or partially unavailable for the holding of the Exhibition as a result of:
- 7.3.1. an act of Force Majeure; or
  - 7.3.2. conflicts or misinterpretations arising with the national or local authorities of the host country, its sponsors, agents or other bodies regarding any and all aspects of the Exhibition; or
  - 7.3.3. a change in Venue or date of the Exhibition made at We Are Africa's absolute discretion, then each of the following shall apply:
    - 7.3.3.1. Neither We Are Africa nor any of its agents shall have any liability for any loss, damage or delay to the Exhibitor arising as a result of such circumstances;
    - 7.3.3.2. We Are Africa shall be entitled, but not obliged, to reschedule the Exhibition to another date and/or at an alternative site; and
    - 7.3.3.3. We Are Africa shall be entitled to retain such part of the Fee paid by the Exhibitor as it, in its absolute discretion, considers necessary to meet any expenses incurred by it in connection with the Exhibition.

## **8. INSURANCE**

- 8.1. It is a requirement for ALL Exhibitors and sub-Exhibitors to have public liability insurance cover for a minimum of ZAR 85 million valid in South Africa for the duration of the Exhibition (as required by the venue or by other authorities). An administration fee of ZAR 3,499 plus VAT will be automatically included on all Contracts unless a proof of alternative cover (if applicable) is provided at the time of signing and submitting the Invitation. Any Exhibitor not providing proof of public liability cover before the Exhibition will not be allowed to exhibit.
- 8.2. The Exhibitor is responsible for arranging its own insurance in relation to its employees, property and other equipment for which it is responsible and its participation expenses in case of cancellation, etc.

## **9. TAX**

- 9.1. We Are Africa reserves the right to charge VAT on the Fee to all Exhibitors exhibiting at the Event, inline with its status and obligations in South Africa.
- 9.2. All Exhibitors are fully responsible for all other tax liabilities as required by local governing authorities. We Are Africa has no responsibility for the relevant tax process. This is a matter exclusively between the participating Exhibitor and the relevant local authorities and the Exhibitor hereby indemnifies the Exhibitor for any tax charges which are the responsibility of the Exhibitor but which may be levied against We Are Africa.

## **10. USE OF DATA**

- 10.1. An official catalogue of Exhibitors will be issued by We Are Africa to Buyers. We Are Africa does not accept any responsibility for any omissions, misquotations or other errors that may occur in the compilation of the catalogue.
- 10.2. The Exhibitor hereby consents to its personal information being displayed in the official catalogue and other ancillary documentation, including on relevant websites.
- 10.3. The Exhibitor hereby consents to being photographed or videoed by a camera during its participation at the Exhibition and acknowledges that the resulting material could be used by We Are Africa for promotional purposes on print, on the internet and on electronic format at We Are Africa absolute discretion.
- 10.4. To the extent that the Exhibitor may be required by law to do so, it will obtain the consent of its officers, employees, agents or sub-contractors for the use of photographic and other material as set out in this clause 11.



## **11. DISPUTE RESOLUTION: NEGOTIATION, MEDIATION THEN ARBITRATION**

11.1. The Parties are obliged to negotiate or (in the event that negotiation is not successful) mediate or (in the event that mediation is not successful) arbitrate any dispute arising in connection with this Agreement and may not initiate court proceedings save as stipulated in clause 11.5 below.

11.2. Negotiation:

11.2.1. Should any dispute, disagreement or claim arise among the Parties (the "Dispute") concerning this Agreement, the Parties shall endeavour to resolve the dispute by negotiation.

11.2.2. This entails one of the Parties inviting the other or others in writing to meet and to attempt to resolve the Dispute within 14 (fourteen) days from date of written invitation.

11.3. Mediation:

11.3.1. If the Dispute has not been resolved by such negotiation within 14 (fourteen) days of the commencement of it by agreement among the Parties, then the Parties shall refer the Dispute to mediation.

11.3.2. The Parties shall use their best endeavours to ensure that the mediation is held and concluded and a mediated outcome agreed upon by the Parties within 30 (thirty) working days after the delivery of the referral to mediation.

11.3.3. The mediator shall be a person agreed among the Parties. Alternatively, any Party may request the Auditors to appoint a mediator, which it is authorised to do in its sole discretion, save that the appointed mediator must be independent.

11.3.4. The mediation shall have failed if any of the Parties, not less than 30 (thirty) days after the commencement of the mediation process, delivers a written notice to the other Parties declaring that the mediation has failed.

11.4. Arbitration:

11.4.1. In the event that mediation is not successful, then the Parties must refer the matter to arbitration.

11.4.2. Referral to arbitration must be by way of written notice delivered to the addresses nominated by the other Party in terms of the Invitation.

11.4.3. The Parties shall use their best endeavours to ensure that the arbitration is held and concluded and a decision handed down within 30 (thirty) working days after the delivery of the referral to arbitration.

11.4.4. The arbitrator shall be a person agreed among the Parties. Alternatively, any Party may request the Arbitration Foundation of Southern Africa (“AFSA”) to appoint an arbitrator, which it is authorised to do in its sole discretion, save that the appointed arbitrator must be independent. If AFSA no longer exists then an arbitrator will be appointed by the president (or his/her) nominee) of the Cape Law Society or its successor in title.

11.4.5. The arbitrator shall have the fullest and freest discretion with regard to the procedure applicable to the proceedings, including whether or not he shall require assessors to assist in his decision making, as well as the venue and timing thereof, subject to the provisions of this clause 11.

11.4.6. The arbitrator's decision shall be final and binding on the Parties.

11.4.7. The arbitrator may make an award as to his costs.

11.4.8. The provisions of the Arbitration Act, No. 42 of 1965, shall apply to any arbitration held in terms of this clause 11.

11.5. Court proceedings:

A Party may institute court proceedings only if such court proceedings are necessary:

11.5.1. for the protection of any rights pending the resolution of an arbitration in terms hereof; or

11.5.2. to obtain relief where grounds justifying urgent relief exist; or

11.5.3. to compel a Party to abide by the terms of this dispute resolution clause.

11.6. Unless otherwise agreed in writing by all the Parties, any such negotiation, mediation or arbitration shall be held in Cape Town.

## **12. GENERAL**

12.1. The Contract shall come into force on the Commencement Date and shall continue until the completion of the Exhibition, or until otherwise terminated in accordance with its terms. Upon the termination of this Agreement for any reason:

12.1.1. Any sum owing by either Party to the other under any of the provisions of this Contract shall become immediately due and payable;

12.1.2. All clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain in full force and effect;

12.1.3. Termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of termination;

- 12.1.4. Subject to this clause 12.1, and except in respect of any accrued rights, neither Party shall be under any further obligation to the other; and
- 12.2. No failure or delay by either Party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either Party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3. If any provision of these Terms is held by any court or other competent authority to be invalid, illegal or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- 12.4. Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the Parties. No Party shall have authority to act as agent for, or to bind, the other Party in any way.
- 12.5. The Parties shall at all times owe each other a duty of good faith and shall, in all dealings with each other observe standards of good faith.
- 12.6. Neither this Contract nor any part, share or interest herein nor any rights or obligations under it may be ceded, delegated or assigned by either Party without the prior written consent of the other Party, except that We Are Africa shall be entitled to perform any of the obligations undertaken by it through any other member of its group.
- 12.7. This Contract may be executed in a number of counterparts and by the same Parties in different counterparts, but shall only be deemed to have been concluded when each Party has executed at least one counterpart. Each counterpart, when executed, shall be an original, but all counterparts together constitute the same document.
- 12.8. Each of the Parties acknowledges and agrees that it has had independent legal, accounting, financial, technical and other relevant expert advice relating to this Contract and that it has not relied upon any warranty, representation or assurance given by or on behalf of any other Party, other than as expressly set out in this Contract, in binding itself to this Contract.
- 12.9. This Contract shall be governed by and construed according to South African Law.
- 12.10. Subject to clause 11, each Party submits to the exclusive jurisdiction of the South African Courts and waives any right it may have to object to an action being brought in those courts, but for the benefit of We Are Africa, the parties agree that We Are Africa may bring any action arising out of or in connection with this Contract, or enforce any judgment, in the courts of any other jurisdiction.

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31 Westlake Lifestyle Centre Westlake Drive, Tokai  
Cape Town  
South Africa  
7945