



Spier
ANNO 1692

Spier Resort Management (Pty) Ltd.

Reg. No 1995/002833/07

PO Box 1078, Stellenbosch 7599

Tel: +27 21 809-1100 Fax: +27 21 809-1134

GENERAL TERMS AND CONDITIONS - ACCOMMODATION RESERVATIONS

1 INTERPRETATION

- 1.1 In the Agreement unless the context otherwise indicates –
- 1.1.1 "**Agreement**" means these Terms and Conditions read together with the Pro-Forma Invoice and the Credit application form (if a Client has been granted Credit);
- 1.1.2 "**Accommodation Costs**" means the amount indicated in the Pro-Forma Invoice payable to Spier as consideration for the letting of accommodation at the Hotel;
- 1.1.3 "**Additional Costs**" means any costs incurred in connection with the occupation of the Hotel and the use of Hotel facilities, over and above the Accommodation Costs;
- 1.1.4 "**Arrival Date**" means the scheduled date of arrival, as stipulated in the Pro-Forma Invoice;
- 1.1.5 "**Client**" means the juristic person whose name is indicated on the Pro-Forma Invoice;
- 1.1.6 "**Consumer Protection Act**" means the Consumer Protection Act, 68 of 2008;
- 1.1.7 "**Credit**" means the deferral of the Client's obligation to pay for any costs as contemplated in this Agreement;
- 1.1.8 "**Group Reservation**" means a reservation for a group of 10 (ten) or more rooms;
- 1.1.9 "**Hotel**" means Spier Hotel and Conference Centre located at Stellenbosch;
- 1.1.10 "**Master Account**" means the account opened at the Hotel in the name of the Client to which expenditure in respect of the reservation is debited in accordance with clause 7;
- 1.1.11 "**Pro-Forma Invoice**" means a written pro-forma tax invoice issued by Spier in respect of any reservation;
- 1.1.12 "**Outstanding Amount**" means, at any relevant point in time, the amount outstanding and owed by the Client in respect of all services rendered and other charges levied in terms of this Agreement by Spier;
- 1.1.13 "**Rooming List**" means a schedule reflecting the details of the rooming requirements and the guests;
- 1.1.14 "**Signature Date**" means the date of signature of this Agreement by the Party signing last in time;
- 1.1.15 "**Spier**" means Spier Resort Management Proprietary Limited, registration number 1995/002833/07;
- 1.1.16 "**Terms and Conditions**" means the terms and conditions contained in this document; and

SPIER WINES (Pty) Ltd

Spier Estate, Annandale Road, Stellenbosch, 7600

PO Box 99, Lynedoch, 7603

Tel: +27 (0)21 881 8400 Fax: +27 (0)21 881 3699 www.spierwines.co.za

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1.1.17 "VAT" means value added tax as levied in terms of the Value Added Tax Act of 1991, as amended.

2 GRANTING OF CREDIT

- 2.1 Credit arrangements are on application only and such application must be approved by Spier in writing. Credit application forms must be completed in full and signed.
- 2.2 The granting of Credit shall be entirely in the discretion of Spier. Spier shall be entitled at any time on written notice to the Client to withdraw any unutilised Credit provided to the Client.
- 2.3 With effect from the acceptance of the Client's application for Credit, the Client shall be entitled to debit any costs up to the maximum amount (if any) stipulated on the credit application form ("**the Credit Limit**").
- 2.4 The Credit Limit may be reduced by either Spier or the Client on written notice provided that where the Client requests a decrease in the Credit Limit this will only apply to the extent that there is unutilised Credit available to the Client and then only to the extent of the unutilised Credit, unless the Client reduces the Outstanding Amount. Spier shall after the receipt of such request advise the Client in writing as to the new Credit Limit and when it will take effect.
- 2.5 Should the Client exceed the Credit Limit at any time, Spier shall at its sole discretion and without prejudice to any of its rights or remedies in terms hereof and at law, be entitled to refuse to debit any further amounts to the Master Account.
- 2.6 The Outstanding Amount shall not bear interest for the duration of the period that Credit is provided ("**the Credit Period**"). Subject to clause 2.2, the Credit Period shall not exceed 30 (thirty) days notwithstanding anything to the contrary contained elsewhere (whether in the Credit application form, the Pro-Forma Invoice or otherwise).
- 2.7 The fact that the Client receives Credit in terms of this Agreement shall not be construed as obliging Spier to let any accommodation to the Client, it being understood that Spier shall always be entitled to refuse to sell or render any services required by the Client.

3 BOOKING PROCEDURE

- 3.1 The Client must follow the procedure set out in this clause 2 when making a reservation.
- 3.2 Quotations will be provided by Spier in writing. Quotations will be based on availability as at the date and time of quoting.
- 3.3 If a person wishes to make a reservation it must do so in writing by signing the Pro-Forma Invoice and sending it back to Spier.
- 3.4 Unless otherwise agreed to in writing by Spier, a reservation will be regarded as provisional until secured by payment of a deposit (as contemplated in clause 6.4).
- 3.5 A Client may only regard a reservation as a confirmed, binding reservation after Spier has acknowledged payment of such deposit, unless otherwise agreed to in writing by Spier.
- 3.6 Notwithstanding the fact that a deposit is not yet due and payable, Spier will be entitled to receive other enquiries or consider reservations from other persons for the same accommodation facilities but will give the Client the first option to confirm the booking.
- 3.7 Rooming Lists must be provided to Spier in writing (substantially in the format attached to the Pro-Forma Invoice) by no later than 14 (fourteen) days prior to the Arrival Date.

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3.8 Spier reserves the right, without prior notice, to change the guest assigned rooms without being liable to the guest following such change or affecting the agreed rates.

4 ACCOMMODATION COSTS

- 4.1 Unless a Pro-Forma Invoice stipulates otherwise, prices quoted in the Pro-Forma Invoice shall –
- 4.1.1 be expressed to be inclusive of VAT;
 - 4.1.2 be quoted in South African Rand;
 - 4.1.3 be non-commissionable;
 - 4.1.4 be based on a per person, sharing basis;
 - 4.1.5 be based on the particular room type requested at the Hotel;
 - 4.1.6 exclude breakfast;
 - 4.1.7 include all Government taxes and levies related to the provision of accommodation, including the prevailing tourism levy, but excluding any conservation levies, or other levies unrelated to the provision of accommodation.
- 4.2 Spier reserves the right to, upon prior notice, increase the Accommodation Costs should Government taxes or levies be amended or should a further tax or levy be introduced during this Agreement. In the event of a change in the VAT rate, local service charges and taxes, or price fluctuations then the appropriate amended rate will be levied.
- 4.3 Rates are subject to currency fluctuations and the Client shall be responsible for any currency fluctuations when transmitting payment.
- 4.4 Spier may from time to time offer discounted rates for Group Reservations but it shall not be obliged to do so.

5 ADDITIONAL COSTS

- 5.1 All Additional Costs shall be paid by the Client to Spier in addition to the Accommodation Costs.
- 5.2 Porterage and room drop services are available on request. Porterage is charged at a charge of R20.00 per room return. Any room drops will be charged at R10.00 per drop.
- 5.3 Where porterage or room drop services are required for Group Reservations arrangements must be made with the Hotel at least 30 (thirty) days prior to the Arrival Date unless otherwise agreed to in writing with Spier.

6 PAYMENT

- 6.1 All amounts owing to Spier in terms of this Agreement shall be paid to Spier in the manner stipulated by Spier from time to time.
- 6.2 All Accommodation Costs must be pre-paid in full prior to the Arrival Date unless otherwise agreed in writing with Spier.
- 6.3 In the event of Spier accepting a reservation within 30 (thirty) days before the Arrival Date, then payment in respect of such reservation shall be made within 48 hours after the issue of a Pro-Forma Invoice.
- 6.4 Spier reserves the right to request deposits or full payment in advance.

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- 6.5 Any/all Outstanding Amount shall be due on departure unless the Client has been granted Credit, in which event Additional Costs will be debited to the Master Account and settled in accordance with clause 2.6.
- 6.6 All amounts due shall be paid in full, without any deduction or set-off and without the costs of transfer of funds either in cash at the Hotel or directly into the bank account indicated in the Pro-Forma Invoice or such other bank account as Spier may notify the Client of in writing from time to time.
- 6.7 A copy of any bank deposit slip must be faxed to the Hotel. Failure to do so timeously will make it impossible for Spier to post the deposit to the correct reservation, resulting in the release of the reservation.
- 6.8 Any payment made pursuant to a Group Reservation is specific to that Group Reservation, and may not be transferred to any other reservation.
- 6.9 If a Client fails to make any payment on the due date Spier shall not be obliged to honour any reservation and may release rooms for sale and may refuse to accept further bookings.
- 6.10 Spier shall be entitled to charge interest on any amount not paid on the due date for payment at the prime interest rate charged by Spier's bankers on overdrawn current accounts from time to time calculated daily and compounded monthly in arrears as certified (in the case of a dispute as to the rate so payable) by any manager of any branch of the bank whose authority, designation and appointment it shall not be necessary to prove.
- 6.11 All payments made by the Client to Spier shall be allocated, to the extent relevant, first to interest, then to costs, including all default administration charges and legal costs, and finally towards the reduction of the Outstanding Amount.
- 6.12 All the Accommodation Costs shall be due and payable by the Client notwithstanding that the Client may not, for whatever reason, make use of the Accommodation or any part thereof.
- 6.13 The Client warrants that at the time of making each reservation it will have sufficient funds to cover the amount that will become payable to the Hotel in respect of each of any reservation made in terms of this Agreement. The Client undertakes to advise Spier at the time of making a reservation, should it be unable to confirm the aforesaid warranty in respect of that reservation.

7 MASTER ACCOUNT

- 7.1 Spier shall, for purposes of any Group Reservation, open and maintain a Master Account for the duration of any reservation.
- 7.2 Billing instructions for the Master Account will be set out in the Pro-Forma Invoice or alternatively, must be provided to Spier at least 30 (thirty) days prior to the Arrival Date unless otherwise agreed in writing.
- 7.3 The Client shall provide Spier with a list of persons, together with specimen signatures, authorised to sign expenditure to the Master Account. It is the responsibility of the Client to ensure that only these authorised signatories sign expenditure to the Master Account. The Client shall appoint one of the authorised signatories to check and sign the Master Account on check-out of the Group Reservation. It is the responsibility of the Client to advise Spier on check-in at the Hotel which authorised signatory/ies it has appointed.
- 7.4 The Master Account must be signed on departure by the same signatory authorised by the Client to check and sign the Master Account.

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7.5 Payment of the Master Account shall be made on departure, unless Credit has been granted in which event payment shall be made within 30 (thirty) days after the date of the Master Account (as contemplated in clause 2.6).

7.6 Acceptable payment methods for Master Accounts will be specified by the Hotel.

7.7 Upon the written request of the Client, individual accounts will be opened in respect of guests whose expenditure will not be accounted for in the Master Account. The Client undertakes to inform such guests that they are required to furnish Spier with a credit card guarantee on check-in at Spier, and that on check-out from Spier, each guest will be required to settle his/her account in full.

8 AVAILABILITY OF ROOMS

8.1 Spier has 33 double rooms and 122 twin bedded rooms. Room types cannot be guaranteed and are subject to availability at the date of issue of the Pro-Forma Invoice.

8.2 Spier reserves the right to limit the number of rooms available at any discounted rate (as contemplated in clause 4.4) and such rates are therefore subject to availability of rooms at the Hotel as the time of the quotation.

8.3 Should rooms not be available at the discounted rate, Spier may from time to time (at its discretion) offer the Hotel's best available rate less a percentage.

9 CANCELLATIONS, AMENDMENTS OR NO-SHOWS

9.1 Any amendments, changes or cancellations to a booking prior to the Arrival Date will only be considered and/or effected by Spier upon written instruction from the Client, and further will be subject to a cancellation penalty determined in accordance with clause 9.2.

9.2 The cancellation penalty shall be determined by Spier, in its discretion, based on the figures indicated in the Pro-Forma Invoice and having regard to the length of notice of cancellation, the reasonable potential to find another guest between the time of receiving the cancellation notice and the time of cancelled reservation and the general practice in the hotel and leisure industry.

9.3 All rooms that have been confirmed will be held until 24h00 on the scheduled date of arrival at which time the Hotel may re-let the room without further notice, unless notified of a late arrival.

9.4 Cancellation charges will be calculated based upon the figures and details provided in the Pro-Forma Invoice.

10 CONDITIONS OF STAY

The Client acknowledges that the provision of accommodation at the Hotel, as well as the use of the Hotel's facilities, is subject to the Hotel's terms and conditions of stay ("**Conditions of Stay**") which are incorporated herein.

11 FORCE MAJEURE

11.1 The Hotel shall not be liable to the Client in the event and to the extent that such non-performance is the direct result of or has been directly caused by *force majeure*, which shall mean any event beyond the reasonable control of the Hotel and which could not reasonably have been foreseen by it and shall include –

11.1.1 where any part of the Hotel is closed due to any reason beyond the Hotel's control;

11.1.2 where there is a failure to supply the Hotel with gas, electricity or water;

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- 11.1.3 war, invasion, act of foreign enemy, hostilities or warlike operations, civil war, mutiny, riot (insofar as it is uninsurable), civil commotion, military rising, insurrection, rebellion, revolution, military or usurped power or any act of any person acting on behalf of or in connection with any organisation with activities directed towards the overthrow by force of the government or to the influencing of it by terrorism or violence, confiscation, nationalisation or requisition or destruction of or damage to property by or under the order of the government de jure or de facto or any public or local authority.

12 BREACH

- 12.1 The Client shall be in breach of its obligations under this Agreement if it -
- 12.1.1 fails to pay punctually any amount due and payable to Spier;
- 12.1.2 commits any other breach of any of the terms of the Agreement and fails to remedy same within a period of 10 (ten) business days from the date of written notification to that effect from Spier;
- 12.1.3 becomes insolvent or bankrupt or goes into liquidation or has an administration or administrative receiver appointed over its affairs.
- 12.2 If the Client is in default as contemplated above, or should Spier be otherwise entitled in law, Spier shall, without prejudice to any other rights that it may have at law or in terms of this Agreement be entitled to –
- 12.2.1 suspend or terminate the Credit;
- 12.2.2 cancel this Agreement on written notice to the Client or to claim specific performance in terms of this Agreement.
- 12.3 If Spier cancels or purports to cancel this Agreement then, notwithstanding anything to the contrary herein contained, the Outstanding Amount shall immediately be due and payable by the Client to Spier.

13 OVERBOOKING

- 13.1 Should the Hotel be unable to provide the room(s) and/or services described in the Pro-Forma Invoice, then it shall use its best endeavours to inform the Client as soon as practicable. The Hotel's liability to the Client shall be no greater than the amount paid by the Client to the Hotel in respect of the reservation (unless the Consumer Protection Act applies to this Agreement).
- 13.2 If Hotel is unable to provide the room(s) and/or services described in the Pro-Forma Invoice for any reason other than *force majeure*, then the Hotel will be obliged to use its reasonable endeavours to provide alternative facilities to the Client at another hotel similar or comparable standard subject to such facilities being available.

14 CERTIFICATE OF INDEBTEDNESS

A certificate signed by any director or manager (whose appointment, authority or qualification need not be proved) for the time being of Spier shall be –

- 14.1 *prima facie* proof of the quantum of the Outstanding Amount; and
- 14.2 valid, together herewith, for any purpose and as a liquid document (alternatively as proof of a liquidated amount) in any Court or forum of competent jurisdiction for the purpose of obtaining provisional sentence, summary judgement or any other judgement against the Client,

and the Client acknowledges its indebtedness in respect of any amount so certified.

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15 CREDIT INFORMATION

The Client agrees that Spier may –

- 15.1 make inquiries to confirm any information provided by the Client in the Credit application form;
- 15.2 seek information from any credit bureau when assessing the Client's application and at any time during the existence of this Agreement; and
- 15.3 disclose the existence of the Client's account to any credit bureau, share positive and negative information about the Client and its compliance with this Agreement with any such credit bureau.

16 ADDRESS FOR SERVICE OF NOTICES

- 16.1 Each of the parties chooses as its address for the purpose of giving any notice, the serving of any legal process and for any other purpose, the addresses set forth in the Pro-Forma Invoice.
- 16.2 Any notice pursuant hereto may be served by hand or sent by pre-paid registered post, facsimile or e-mail to the addresses stipulated on the Pro-Forma Invoice.
- 16.3 Such notice shall be deemed to have been duly given:
 - 16.3.1 on delivery, if delivered by hand or by courier to the parties' physical address;
 - 16.3.2 on the date of transmission, if sent to the parties' facsimile number or e-mail address provided delivery is confirmed electronically or otherwise.
- 16.4 Notwithstanding anything to the contrary contained or implied in the Agreement, a written notice or communication actually received by one of the parties from another including by way of e-mail or facsimile transmission shall be adequate written notice or communication to such party.

17 APPLICATION OF THESE TERMS AND CONDITIONS

- 17.1 These Terms and Conditions shall bind the Parties on the acceptance by Spier of the Client's application for Credit, or where no Credit is granted or applied for, after the the Client's signature of the Pro-Forma Invoice.
- 17.2 This Agreement shall endure until all the obligations of the Client in terms hereof (particularly in respect of all amounts due) have been fully discharged unless otherwise terminated in terms hereof.
- 17.3 In the event of a conflict between these Terms and Conditions and the Pro-Forma Invoice then the Pro-Forma Invoice shall take precedence.
- 17.4 The provisions of this Agreement and particularly these terms and conditions shall override any terms or provisions provided or imposed by the Client (which may be inconsistent with these terms and conditions).

18 GENERAL

18.1 Interpretation

- 18.1.1 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 18.1.2 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.

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18.1.3 If any definition contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of this Agreement, notwithstanding that it is only in the interpretation clause.

18.1.4 If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be next succeeding Business Day.

18.2 No assignment

The Client shall not cede, assign, delegate or otherwise dispose of or transfer their rights and obligations under this Agreement to another person without the prior written consent of Spier.

18.3 Choice of Law

This Agreement shall be governed by and construed in accordance with the law of the Republic of South Africa.

18.4 Whole agreement

This Agreement constitutes the whole agreement between the Parties and unless stipulated in the Pro-Forma Invoice no Party shall be bound by any undertakings, representations, warranties and promises or the like not recorded herein.

18.5 No indulgences

No extension of time or other indulgences granted by Spier to the Client in respect of its obligations will constitute a waiver or novation of or otherwise affect any of Spier's rights to enforce strict compliance with the terms of this Agreement.

18.6 Variations to be in writing

No alteration, consensual cancellation, novation or variation of, or addition to this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

18.7 Severability

If any provisions of this Agreement are found to be unlawful, unenforceable or invalid, it shall be deemed to be separate and severable from the remaining provisions of this Agreement and to the extent that same is unlawful, unenforceable or invalid, be deemed to be *pro non scripto*.

18.8 Costs

The Client shall be liable and hereby agrees to pay to Spier or its legal representatives on demand all tracing fees, legal costs on an attorney and own client scale (or such scale as a court or other dispute resolution body or forum may impose) and collection commissions payable by Spier in respect of any action or proceedings which may be instituted against the Client in terms of or arising out of the Agreement.

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