

## STANDARD TERMS AND CONDITIONS

### 1. INTERPRETATION AND DEFINITIONS

1.1 In these Conditions (save as expressly provided or unless the context otherwise requires) the following words and phrases shall have the following meanings:

**“Conditions”** means these standard terms and conditions;

**“Contract”** means these Conditions and the Order for the purchase of Goods and/or supply and acquisition of the Services, including any Specifications;

**“Force Majeure Event”** means any cause preventing either party from performing any or all of its obligations and which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented;

**“Goods”** means the goods (if any) described in the Order;

**“Intellectual Property Rights”** means patents, inventions (whether patentable or not), trade marks, service marks, logos, trade names, domain names, database rights, design rights, rights in know-how, confidential information, trade secrets, copyrights, moral rights and any other intellectual property or proprietary rights (including rights in computer software), in each case whether registered or unregistered and including applications for the grant of any such rights and any and all forms of protection having equivalent or similar effect anywhere in the world and any rights under licences in relation to any such right;

**“Order”** means the Purchaser’s purchase order which shall include details of the Goods and/or Services to be purchased and the address at which such Services and/or Goods will be delivered and/or performed, to which these Conditions are annexed;

**“Price”** means the price set out in the Order;

**“Purchaser”** means the entity which issues this Contract as specified and described in the Order;

**“Services”** means the services (if any) described in the Order;

**“Specifications”** includes any plans, drawings, data, specifications or other information relating to the Goods or Services;

**“Supplier”** means the person so described in the Order; and

1.2 references to a “person” include an individual, body corporate (wherever incorporated), unincorporated association, trust or partnership (whether or not having separate legal personality), government, state or agency of a state, or two or more of the foregoing;

1.3 references to the singular shall include the plural and vice versa and any gender includes the other gender;

1.4 references to Clauses are to clauses of these Conditions;

1.5 the headings in these Conditions are included for convenience only and shall not affect the interpretation or construction of these Conditions;

1.6 references to writing shall be deemed to include any modes of reproducing words in a legible or non-transitory form;

1.7 the words “include” and “including” shall be construed as being by way of illustration or example, and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words; and

1.8 references to a statute or statutory provisions are to such statute or statutory provisions as amended or re-enacted whether before or after the date of these Conditions and include all subordinate legislation made under the relevant statute whether before or after the date of these Conditions.

## **2. APPLICATION**

2.1 These Conditions shall govern and be incorporated into every Contract, and shall prevail over any terms or conditions (whether or not inconsistent with these Conditions) contained or referred to in any correspondence or documentation submitted by the Supplier or elsewhere or implied by custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Purchaser to purchase the Goods and/or acquire the Services subject to these Conditions.

2.3 This Contract and the Conditions therein shall apply to the exclusion of any other terms and conditions on which any quotation has been given to the Purchaser or subject to which the Order is accepted or purported to be accepted by the Supplier.

2.4 The Order will lapse unless unconditionally accepted by the Supplier in writing within seven (7) days of its date.

## **3 ORDERS**

3.1 The Supplier shall within seven (7) days of the receipt of an Order confirm the acceptance of that Order to the Purchaser in writing.

3.2 The Purchaser may at any time request from the Supplier a change to the Order. Such request may relate to the scope of the Goods and/or Services required and/or the Specifications whereby a new Good or Service is offered or needed, or where the scope and/or Specification of the Goods and/or Services available to the Purchaser is increased, decreased or otherwise altered.

3.3 The Supplier shall use its reasonable efforts to meet the Purchaser's request for a change to the Order.

3.4 The terms of any change to the Order must be agreed in writing and signed by an authorised representative of the Supplier and the Purchaser.

## **4. SPECIFICATIONS**

4.1 The quantity, quality and description of the Goods and/or Services shall, subject as provided in these Conditions, be as specified in the Order and in any relevant Specifications.

4.2 Any Specifications specifically produced by the Supplier for the Purchaser, in connection with this Contract, together with the Intellectual Property Rights in such Specifications, shall be the property of the Purchaser.

4.3 The Supplier shall not disclose to any third party or use any such Specifications except to the extent that they come into the public domain through no fault of the Supplier, or as required for the purpose of the Contract.

4.4 The Supplier shall comply with all applicable laws concerning the manufacture, packaging, packing and delivery of the Goods and in the performance of the Services.

4.5 The Supplier shall clearly mark the packaging for all Goods with the Order number.

4.6 The Goods shall be marked in accordance with the Purchaser's instructions and any applicable regulation or requirement of the carrier, and properly packaged and secured so as to reach their destination in an undamaged condition in the ordinary course of

business.

## **5. INSPECTION**

5.1 The Supplier shall not unreasonably refuse any request by the Purchaser to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to dispatch, and the Supplier shall provide the Purchaser with all facilities and assistance as reasonably required for the inspection and testing.

5.2 If as a result of the inspection the Purchaser or his appointed representative is not satisfied that the Goods will comply in all respects with the Contract, and the Purchaser so informs the Supplier in writing within seven (7) days of inspection or testing, the Supplier shall at its own expense take such steps as are necessary to ensure compliance.

## **6. PRICE OF THE GOODS AND SERVICES**

6.1 The Price and currency for the payment of the Goods and/or Services shall be as stated in the Order and, unless otherwise stated, shall be inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods (if any) to the address stated on the relevant Order and any duties, imposts or levies including value added tax or similar tax (if applicable). Upon request the Supplier shall provide the Purchaser with a statement of accounts.

6.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in the rates of exchange, imposition or increase of taxes or otherwise) without the prior written consent of the Purchaser.

## **7. TERMS OF PAYMENT**

7.1 The Supplier shall be entitled to invoice the Purchaser on or at any time after delivery of the Goods and/or performances of the Services, as the case may be. Each invoice shall provide details of the Goods and/or Services to which they relate: quantities; descriptions and unit prices (where appropriate).

7.2 Unless otherwise specified in the Order, the Purchaser shall pay the Price of the Goods and/or Services within forty five (45) days, after the end of the month of receipt by the Purchaser of a proper invoice or, if later, after acceptance of the Goods and/or Services in question by the Purchaser.

7.3 The Purchaser shall be entitled to set-off against the Price any sums owed to the Purchaser by the Supplier.

## **8. DELIVERY**

8.1 The Goods shall be delivered to, and the Services shall be performed at, the address and on the date (or within the period) as stated in the Order during the Purchaser's usual business hours.

8.2 The Supplier shall supply the Purchaser in good time with any instructions or other information required to enable the Purchaser to accept delivery of the Goods and/or performance of the Services.

8.3 The Purchaser shall be entitled to reject any Goods and/or Services delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods and/or Services until the Purchaser has had twenty one (21) days from the delivery date to inspect them or, if later, a reasonable time has passed after any latent defect in the Goods and/or the Services rendered has become apparent.

8.4 Where the date of delivery of the Goods and/or performance of the Services is to be

specified after the placing of the Order, the Supplier shall give the Purchaser reasonable notice of the specified date.

8.5 If delivering food and/or beverages, the Supplier shall clearly display delivery vehicle registration documents in the delivery vehicle and give a copy of the delivery vehicle registration documents to the Purchaser's representative at the point of delivery. The Purchaser reserves the right to reject food and beverage deliveries if the Supplier does not meet the requirements of this clause.

8.6 The time of delivery for the Goods and/or the performance of the Services is of the essence of the Contract.

## **9. COMPENSATION FOR LATE DELIVERY OR PERFORMANCE**

9.1 In the event that any date agreed for the delivery or performance of the Goods and/or Services is exceeded (otherwise than through the Purchaser's fault or as a result of circumstances under the Purchaser's control) the Purchaser may deduct from the Price or (if the Purchaser has paid the Price) claim from the Supplier by way of liquidated damages for delay the sum of five per cent. (5%) of the Price of the Goods and/or Services (where appropriate) that cannot be put into commercial service or performed (as appropriate) for each seven (7) day period that such Goods and/or Services (as appropriate) are delayed subject to a maximum in aggregate sum equal to twenty five per cent.(25%) of the Price of such Goods and/or Services.

9.2 The parties acknowledge that the compensation provided for in Clause 9.1 is direct damages and is a genuine pre-estimate of the loss and damages which the Purchaser may suffer as a result of any delay in the delivery of Goods and/or performance of Services.

9.3 The payment of such compensation under this Clause shall (i) not relieve the Supplier of its obligation to deliver the Goods and/or perform the Services or any other requirement under this Contract; and (ii) be without prejudice to Purchaser's other remedies under law.

## **10. CONFLICTS OF INTEREST**

Supplier shall not pay or give any fee, commission, rebate or anything of value to or for the benefit of any staff of the Purchaser, nor will the Supplier do business with any company knowing the results might directly benefit any staff of the Purchaser. Supplier shall use its best efforts not to permit any of its staff to engage in any activities contrary to or detrimental to the best interest of the Purchaser. Without prejudice to the foregoing, Supplier shall disclose to Purchaser in writing any staff of the Supplier that are a family member or a relative of any of Purchaser's staff.

## **11. RISK AND PROPERTY**

11.1 Risk of damage to or loss of Goods shall pass to the Purchaser upon delivery to the Purchaser in accordance with this Contract.

11.2 Subject to Clause 11.3 the property in the Goods will pass to the Purchaser upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Purchaser once payment has been made in full.

11.3 Where the Purchaser intends to conduct acceptance tests, property in the Goods will not pass until those tests have been satisfactorily completed and the Goods have been accepted.

## **12. WARRANTIES AND LIABILITY**

12.1 The Supplier warrants to the Purchaser that the Goods and Services:

(a) will be of a satisfactory quality and fit for the purpose for which they are intended as held out by the Supplier or made known to the Supplier in writing at the time the Order is placed;

(b) will be free from defects in design, material and workmanship;

(c) will correspond with any relevant Specifications or sample as to quantity, quality and description, and any other specifications, requirements or instructions made known to the Supplier;

(d) will have the capacity or performance characteristics as set out in the Specifications and, where the Purchaser requires proof of the capacity or performance characteristics of the Goods, the Supplier shall provide such;

(e) will comply with all applicable laws and regulations relating to the sale and supply of goods and services in force at the time of delivery.

12.2 The Supplier warrants to the Purchaser that the Services will be performed by appropriately and properly experienced, qualified and trained personnel, with due care, skill and diligence and to such a high standard of quality as it is reasonable for the Purchaser to expect in all circumstances (assuming highest international standards), and that all tools, machinery and supplies necessary for the purposes of the Supplier performing the Services shall be in a good state of repair, maintained to first class standards and provided at the Supplier's own expense (unless expressly agreed otherwise in writing).

12.3 The Supplier warrants to the Purchaser that it has the full right and has and will maintain the power, authorisations, licences, permits and/or consents necessary to enter into the Contract and fully perform its obligations contained in the Contract.

12.4 The Supplier will pass on to the Purchaser the benefit of any additional warranties secured from the Supplier's suppliers.

12.5 The Supplier is liable for damage or loss to the Purchaser's property arising from the performance or non-performance of the Supplier's obligations under any Contract.

12.6 Without prejudice to any other remedy, if any Goods and/or Services are not supplied or performed in accordance with the Order, Specifications and/or or any other provision of the Contract, then the Purchaser shall be entitled for a period of twelve (12) months from the date of the delivery and acceptance of the Goods and/or Services:

(a) to require the Supplier to promptly undertake the repair of, and bear all costs resulting from, any changes in design or other alterations, changes or developments necessary to resolve the failure of the Goods and/or Services to so perform; or

(b) to require the Supplier to supply replacement Goods and/or Services in accordance with the Contract within seven (7) days; or

(c) at the Purchaser's sole option, and whether or not the Purchaser has previously required the Supplier to repair the Goods or to supply any replacement Goods and/or Services, to treat the Contract as discharged by the Supplier's breach and require the repayment of any part of the Price which has been paid.

12.7 The rights and remedies of the Purchaser provided in this Contract are cumulative and are not exclusive of any rights or

remedies provided at law.

12.8 Notwithstanding any other provision of the Contract, and to the extent permitted by law, the Purchaser's liability for breach of any provision of the Contract shall be limited to the Price.

12.9 Nothing in the Contract shall operate to exclude the liability of either party for death, personal injury or fraudulent misrepresentation.

### **13. INDEMNITY**

13.1 The Supplier shall indemnify and keep indemnified the Purchaser, its subsidiaries, associated companies, officers, employees, agents and contractors in full against all losses, damages, costs and expenses of any nature whatsoever awarded against or incurred or paid by the Purchaser as a result of or in connection with:

- (a) a breach by the Supplier of any provision of the Contract;
- (b) a breach by the Purchaser of a contract with a third party where the Purchaser's breach is a result of a failure of the Supplier to perform any or all of its obligations under the Contract;
- (c) a claim by a third party for an infringement (or alleged infringement) of an Intellectual Property Right of that third party where the infringement is a result of the Purchaser having accepted any Goods or Services or having used any Goods or utilised and Services in accordance with the purpose for which they were purchased (including without limitation the use of such Goods and Services and/or resale of such Goods by the Purchaser, its subsidiaries, associated companies, officers, employees, agents and/or contractors); and
- (d) any negligent or wilful act or omission of the Supplier or its officers, employees, agents or contractors.

13.2 The Supplier shall at all times insure and keep itself insured with a reputable insurance provider against all insurable liabilities under the Contract and in respect of the Goods and Services including, without limitation against all the Supplier's liabilities under Clause 12 and Clause 13, and shall, on the Purchaser's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

### **14. INTELLECTUAL PROPERTY RIGHTS**

14.1 If the Supplier or its officers, employees, agents or contractors design the Goods or perform the Services pursuant to a commission from the Purchaser any Intellectual Property Rights created in relation to such Goods or Services shall vest in the Purchaser and

the Supplier shall do or procure the doing of all such further acts and execute or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary to give full effect to this Clause.

14.2 The Supplier acknowledges and agrees that ownership of all rights in and to the Purchaser's Intellectual Property Rights shall at all times remain vested in and belong to the Purchaser and that all usage accrues for the sole benefit of the Purchaser.

14.3 The Supplier shall not use or permit the use of any of the Purchaser's Intellectual Property Rights including names, brandings and/or logos or any identifiable mark of the Purchaser, for any purpose whatsoever, without the express prior written consent of the Purchaser. No public announcement shall be made by the Supplier in relation to the Contract without the prior written consent of the Purchaser.

## **15. TERMINATION**

15.1 The Purchaser shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving seven (7) days' written notice to the Supplier at any time prior to delivery or performance. If such notice is given, the Purchaser's sole liability shall be to pay to the Supplier the price for the Goods and/or Services delivered, accepted and/or performed up to the date of termination.

15.2 The Purchaser shall be entitled (but not obliged) to terminate the Contract without liability to the Purchaser at any time if:

- (a) the Supplier breaches any obligation under the Contract and does not rectify such breach within five (5) days of being notified in writing of the breach by the Purchaser; or
- (b) the Supplier is acquired by or merges with any third party; or
- (c) a meeting is convened, a petition presented, an order made, an effective resolution passed or notice is given for the Supplier's winding up or dissolution or an analogous event (other than for the sole purpose of a solvent amalgamation and reconstruction); or
- (d) the Supplier is unable to pay its debts as they fall due or become insolvent; or
- (e) an encumbrancer takes possession, or a receiver or manager or administrative receiver is appointed, of the whole or any part of the property or assets of the Supplier; or
- (f) the Supplier ceases, or threatens to cease, to carry on its business or suspend payment of its debts; or
- (g) the Purchaser reasonably apprehends that any of the events



mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.

## **16. ASSIGNMENT AND SUBCONTRACTING**

16.1 The Contract is personal to the Supplier and the Supplier shall not without the prior written consent of the Purchaser assign or transfer, or purport to assign or transfer, to any other person any of its rights or its obligations under the Contract.

16.2 The Supplier shall not subcontract the performance of the whole or any part of the Contract without the prior written consent of the Purchaser.

## **17. LICENCES AND CONSENTS**

If a licence or consent of any government or other authority is required for the supply or carriage of the Goods or performance of the Services, the Supplier will obtain such licence or consent at its own expense and produce evidence of it to the Purchaser on demand.

## **18. CONFIDENTIALITY**

The Supplier and its officers, employees, agents and any subcontractors appointed by it in accordance with the Contract, shall treat all product, customer or business information, drawings, designs and specifications submitted to it by the Purchaser, the Contract and anything connected with the Contract (including but not limited to, Price or any information of a confidential nature about the Purchaser's business), at all times as confidential information and shall not disclose it to any third party without the Purchaser's prior written consent or use it for any purpose (including making any announcements as to the existence of the Contract) except where authorised in writing by the Purchaser to do so. This obligation will not apply to any such information which: (i) comes into the public domain other than by a breach by the Supplier; or (ii) comes into the Supplier's possession without any obligation of confidence and the Supplier can prove to the Purchaser that this is the case; or (iii) is required to be disclosed as a matter of law.

## **19. FORCE MAJEURE**

19.1 If either party is directly or indirectly affected by a Force Majeure Event, it shall promptly notify the other party, as soon as reasonably practicable but in any event within three (3) days after becoming aware of the commencement of the relevant event, of the nature and the extent of the circumstances in question.

19.2 Neither party shall be deemed to be in breach of the Contract or otherwise be liable to the other, for any delay in performance or

the non-performance of any of its obligations under the Contract to the extent that the delay or non-performance is entirely due to any Force Majeure Event.

19.3 Where a party claims a Force Majeure Event, the other party shall be entitled to terminate the Contract where the Force Majeure Event prevents performance for thirty (30) days or more.

19.4 If at any time the Supplier claims a Force Majeure Event in respect of its obligations under the Contract, then the Purchaser shall be entitled to obtain from any other person such quantity of Goods and/or Services as the Supplier is unable to supply, and will be released from all its obligations to the Supplier under the Contract.

19.5 Before exercising its right of termination under this Clause 19, the party requesting termination shall negotiate in good faith with the other party to reach an agreement on the continued performance of the Contract.

19.6 Neither party shall be entitled to claim a Force Majeure Event in the following cases:

- (a) a shortage of or increased price of labour, materials or utilities; or
- (b) any delays, inefficiencies, late performance or similar occurrence of subcontractors; or
- (c) after expiration of the delivery time stipulated in any Order plus any admissible adjustments thereto permitted under this Contract; or
- (d) any actions or circumstances caused by the party's own fault or negligence.

## **20. NOTICE**

Any notice required to be given by either party to the other under the Contract shall be in writing and shall be sent by courier to the other party at its registered office or principal place of business or such other address as may be specified in the Order or as a party may notify, in writing, to the other party to the Contract. Any such notice shall be deemed to have been delivered three (3) days after dispatch providing the notifying party is holding signed proof of dispatch from a recognised courier company.

## **21. WAIVER**

No failure of either party to insist upon strict performance of any terms and conditions of the Contract shall be construed as a waiver of any rights or remedies that it may have unless specifically provided in this Contract. Waivers under the Contract must always be given in writing.

## **22. INVALID TERMS**

If any part of the Contract is found by any court or administrative

body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other Conditions or terms of the Contract which shall remain in full force and effect. If any part of the Contract is so found to be invalid or unenforceable but would cease to be invalid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

### **23. ENTIRE AGREEMENT**

The provisions contained in this Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties (whether written or oral) relating to the subject matter of the Contract. Any variation of the Contract must be agreed in writing and signed by each party.

### **24. GOVERNING LAW AND JURISDICTION**

This Contract shall be governed by and construed in accordance with the laws of Kenya. The parties hereby submit to the exclusive jurisdiction of the courts of Kenya.

## Web Site User Agreement

Welcome to TZC 's web site terms and conditions ("**Terms and Conditions**").

**General** This web site ("**Site**") is owned by TZC trading for Breezes Beach Club and Spa, The Palms Zanzibar, Baraza Resort and Spa, Rising Sun Diving Centre, Palacina .

For the purposes of these Terms and Conditions "We", "Our" and "Us" refers to TZC . Please review these Terms and Conditions carefully before using this Site. Your use of this Site indicates your irrevocable agreement to be bound by these Terms and Conditions (as may be amended by us from time to time). If you do not agree to be bound by these Terms and Conditions please stop accessing and using this Site immediately.

This Site is intended only for your personal, non-commercial use. Unless otherwise specified, you alone are solely responsible for determining whether any feature of this Site is appropriate or suitable for your requirements.

We may, at Our sole discretion, impose limits or restrictions on the use you may make of the Site. Further, for security, technical, maintenance, legal or regulatory reasons, or due to any breach of these Terms of Use, We may withdraw the Site or your access to the Site, at any time and without notice to you.

**Bookings** In addition to any booking terms specified for a particular hotel at the time of booking all hotel bookings made via this Site are subject to the following terms:

- All reservations must be guaranteed with a valid credit card;

- Standard Check-in times as specified by the hotels;
- Valid identification must be presented upon arrival; and
- Visas may be required for certain nationalities.

### **Currency Conversions**

Please note that the currency conversions shown on the Site are for comparison purposes only. Hotel bookings will be made in the local currency originally displayed for the relevant hotel and the actual currency conversion rate will vary from time to time.

Exchange rates are update by TZC based on mean rate available at the time of creating the site. TZC will update the rates from time to time.

### **Payments**

We accept [all major international credit and debit cards] (each a “**Card**”). Your Card will be debited when you click the ['confirm payment' button].

Please supply us with the correct Card billing and cardholder information (“**Payment Information**”). If you do not supply the correct Payment Information, purchase made through the Site may be delayed. We reserve the right to cancel purchases made through the Site if payment is declined or if you have supplied incorrect Payment Information.

We may incur charges when a booking is made through this Site using a Card. We reserve the right to pass on to you, in full, any changes incurred by us in connection with any purchase made through this Site by you using a Card. We will let you know of any applicable charges prior to you clicking the ['confirm payment' button].

We may outsource payment processing to a third party provider. We will not be liable to you or anyone else for any loss resulting from an act or omission of a third party payment provider.]

## **Data Protection**

You can access most of the areas of the Site without registering with us or providing us with your personal information but certain areas may require you to register or provide personal information. Any personal information you supply to us when you use this Site will be used in accordance with Our Privacy Policy.

## **Proprietary Rights**

All information, documents, images and other materials provided on this Site (as well as the organisation and layout of this Site) together with the underlying software code are owned either directly by Us or by Our licensors. Without Our prior written permission, you may not copy, modify, alter, publish, broadcast, distribute, sell or transfer any material (whether in hardcopy, electronic or any other form) on this Site or the underlying software code whether in whole or in part. The contents of this Site may, however, be downloaded, printed or copied for your personal non-commercial use.

Any unauthorised use of this Site may result in a violation of copyright laws, trademark laws, the laws of privacy and publicity, and communication regulations and statutes. Nothing in this Site should be construed to be a grant of a licence, ownership or any other proprietary right in this Site, its contents or the underlying software code. All rights not expressly granted in these Terms and Conditions are reserved.

## **User Content**

Whenever you make use of a facility on this Site that allows you to upload your own content such as feedback and comments (“User Content”), you must comply with the acceptable use obligations below. You warrant that you have the right to upload User Content and that any such User Content complies with these Terms and Conditions, and you fully indemnify us for any loss suffered as a result of any breach of that warranty.

By submitting User Content to this Site by electronic mail, postings on this Site or otherwise, you grant us a non-exclusive, royalty-free, perpetual, transferable, irrevocable and fully sub-licensable right to:

(a) use, reproduce, modify, adapt, translate, distribute, publish and create derivative works from and publicly display and perform such User Content throughout the world in any media, now known or hereafter devised; and

(b) use the name that you submit in connection with such User Content.

You also grant us the right to pursue at law any person or entity that violates your or our rights in the User Content by a breach of these Terms and Conditions. You acknowledge and agree that all User Content submitted by you is non-confidential and that no third parties have any rights in such User Content which could be infringed by Our use of it. You agree to do all things and execute all documents required to allow Us to take full advantage of the rights granted to Us by this clause.

This Site may contain feedback forums, bulletin boards or other forums in which you or third parties may post reviews, comments or other User Content, on the Site (“Interactive Areas”). If we provide such Interactive Areas, you are solely responsible for your use of such Interactive Areas and all use of them is at your own risk. By using any Interactive Areas, you expressly agree not to post, upload

to, transmit, distribute, store, create or otherwise publish through the Site any:

(a) User Content that is unlawful, libelous, defamatory, offensive to any religious or moral groups, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, fraudulent or otherwise objectionable;

(b) User Content that would constitute, encourage or provide instructions for the commission of a criminal offence, violate the rights of any party, or that would otherwise create liability or violate any local or national or international law, including, without limitation, the regulations of the relevant stock exchange regulator in that jurisdiction in which the Content is published;

(c) User Content that may infringe any patent, trade mark, trade secret, copyright or other intellectual or proprietary right of any party;

(d) User Content that impersonates any person or entity or otherwise misrepresents your affiliation with a person or entity, including Us;

(e) unsolicited promotions, political campaigning, advertising, contests, raffles, or solicitations;

(f) private information of any third party, including, without limitation, names, addresses, phone numbers, email addresses, Social Security and ID Card numbers and credit card numbers;

(g) viruses, corrupted data or other harmful, disruptive or destructive files;



(h) User Content that is unrelated to the topic of the Interactive Area(s) in which such User Content is posted; or

(i) User Content or links to User Content that, in Our sole judgement, either (i) violates any of the above; (ii) is objectionable; (iii) restricts or inhibits any other person from using or enjoying the Interactive Areas or the Site; or (iv) exposes (or may expose) Us, any of Our affiliates, or other users of the Site to any harm or liability of any type.

We take no responsibility and assume no liability for any User Content posted, stored or uploaded onto the Interactive Areas by you or any third party, or for any loss or damage thereto, nor are we liable for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity you may encounter in the Interactive Areas. We are not liable for any statements, representations or User Content provided by users of the Site in any public forum, personal home page or other Interactive Area. Although we have no obligation to screen, edit or monitor any of the User Content posted to or distributed through any Interactive Area, we may, in our absolute discretion, remove, screen or edit without notice any User Content posted or stored on the Site at any time and for any reason, and you are solely responsible for creating backup copies of and replacing any User Content you post or store on the Site at your sole cost and expense.

If it is determined that you retain any moral rights (including rights of attribution or integrity) in the User Content, you hereby declare that (i) you do not require that any personally identifying information be used in connection with the User Content, or any derivative works of or upgrades or updates thereto; (ii) you have no objection to the publication, use, modification, deletion and exploitation of the User Content by Us or Our affiliates, licensees, successors and assigns; (iii) you forever waive and agree not to claim or assert any entitlement to any and all moral rights of an author in any of the User Content; and (iv) you forever release Us and Our affiliates, licensees, successors and assigns from any claims that you could

otherwise assert against us by virtue of any such moral rights.

Your use of the Interactive Areas or other parts of the Site in violation of these Terms and Conditions may result in, among other things, termination or suspension of your rights to use the Interactive Areas and/or the Site. In order to cooperate with legitimate governmental requests, summons or court orders, to protect other users of the Site, our systems and customers, or to ensure the integrity and operation of our business and systems, we may access and disclose any information we consider necessary or appropriate, including, without limitation, your user profile information (i.e. name, email address, etc.), IP address and traffic information, usage history, and User Content submitted to this Site. Our right to disclose any such information shall take precedence over any terms of Our Privacy Policy.

We will not be responsible, or liable to any third party, for the content or accuracy of any User Content on our Site.

### **Acceptable Use**

You may only use this Site in accordance with these Terms and Conditions and, in any event, for lawful and proper purposes which includes complying with all applicable laws, regulations and codes of practice within Kenya and any other jurisdiction from which you are accessing this Site.

In particular, you agree that you will not:

- (a) use this Site in a manner which causes or may cause an infringement of the rights of any other or is in breach of confidence or privacy;

(b) use this Site in any manner that could, or could reasonably be expected to, damage or overburden any of our servers, any network connected to any of our servers or any related infrastructure or impose an unreasonable or disproportionately large load on the bandwidth connecting to the Site;

(c) use this Site in any manner that would, or could reasonably be expected to, interfere with any other party's use of this Site;

(d) access the Site through devices or services that are designed to provide high-speed, automated, repeated access;

(e) make any booking which is unauthorised, false or fraudulent;

(f) use any software, routine or device to interfere or attempt to interfere electronically or manually with the operation or functionality of this Site including but not limited to uploading or making available files containing corrupt data, viruses, logic bombs, Trojan horses, worms, harmful components or other malicious software or harmful data via whatever means;

(g) deface, alter or interfere with the front end 'look and feel' of this Site or the underlying software code;

(h) obtain or attempt to obtain unauthorised access, via whatever means, to any of Our networks;

(i) use any robot, spider, screen scraper, data aggregation tool or other automatic device, routine or process ("Automated Process") to process, monitor, copy or extract any web pages on the Site, or any of the information, content, User Content or data contained within or accessible through the Site, without our prior written permission;

- (j) use any Automated Process to aggregate or combine information, content, User Content or data contained within or accessible through the Site with information, content, User Content or data accessible via or sourced from any third party;
  
- (k) use any Automated Process to interfere or attempt to interfere with the proper working of the Site or any transaction or process being conducted on or through it;
  
- (l) reverse engineer, reverse assemble, decompile, or otherwise attempt to discover source code or other arithmetical formula or processes in respect of the software underlying the infrastructure and processes associated with the Site; or
  
- (m) copy, reproduce, alter, modify, create derivative works from, or publicly display, any part of any content from the Site without our prior written permission.

Without prejudice to any of Our other rights (whether at law or otherwise) We reserve the right to (a) cancel your bookings without reference to you; and/or (b) deny you access to this Site where We believe (in Our absolute discretion) that you are in breach of any of these Terms and Conditions.

## **Mobile**

We will not charge you for use of mobile services made available to you by Us on the Site. However, third party charges such as your telecommunication company's rates and fees (including charges for data and SMS) may still apply.

If your mobile telephone number is changed or cancelled, you agree to amend your Online Account as soon as possible. You

acknowledge that if your correct mobile telephone number is not recorded against your Online Account, we will not be able to provide information to you by SMS or to contact you on your mobile telephone.

**Modifications** We reserve the right to make updates to the information, services, products and other materials on this Site at any time without notice. We may also modify these Terms and Conditions at any time, and such modification shall be effective immediately upon posting of the modified Terms and Conditions on this Site. We are under no obligation to specifically contact or notify you of any variation to these Terms and Conditions. Your continued access or use of this Site is deemed to be your irrevocable acceptance of the modified Terms and Conditions.

## **Eligibility and Registration**

In order to access the Site, you must satisfy the minimum age requirement of 18 years (measured according to the Gregorian calendar) and have full legal capacity. If you are under the age of 18 years (measured according to the Gregorian calendar) you must have permission from your parent or guardian before accessing the Site.

You warrant, represent and undertake that you possess the legal right and ability to access the Site in accordance with these Terms and Conditions and, where relevant, to make purchases through the Site.

In order to make use of certain parts of the Site you will need to register an online account with us through this Site ("Online Account"). In order to register an Online Account, you must:

- (a) provide us with complete and accurate registration information;

(b) ensure your use of the Site is in accordance with these Terms and Conditions and any applicable laws; and

(c) select a username and password (“Log-In Details”).

By registering an Online Account with us you warrant, represent and undertake that:

(a) you have given complete and accurate registration information, and will keep that information updated; and

(b) your use of the Site does not violate these Terms and Conditions or breach any applicable laws. You may cancel your Online Account at any time by notifying us. We may terminate your Online Account for any or no reason, at any time, with or without notice to you and without incurring any liability to you, however that liability may arise.

You are solely responsible for all activities that occur in connection with your Log-In Details in respect of the Site and your Online Account. Accordingly, you must take steps to protect the confidentiality of your Log-In Details. You must notify us immediately if you become aware of any disclosure, loss, theft or unauthorised use of your Log-In Details.

### **Limitation of Liability**

You agree that you do not (and will not) have any right to bring an action (of any nature) against Us or any company or entity managed or operated by Us, or Our or their affiliated, associated or subsidiary companies or the officers, directors, managers, shareholders or staff thereof (together the “TZC Entities”) with respect to or in connection with the use of this Site.

Further, in no event will We or any of the TZC Entities be liable for any direct, indirect, special, punitive, exemplary or consequential losses or damages of whatsoever kind arising out of or in connection with the access to, or the use of this Site or any information contained in it, including loss of profit and the like whether or not in the contemplation of the parties and whether based on breach of contract, tort (including negligence), product liability or otherwise, even if advised of the possibility of such damages.

### **Disclaimer of Warranty**

We provide this Site on an "as is" and "as available" basis and without any warranty or condition, express, implied, statutory or otherwise. We and the TZC Entities, specifically disclaim all implied warranties of title, merchantability, fitness for a particular purpose and non-infringement, to the maximum extent that such disclaimers are held to be valid.

In particular and without limiting the foregoing, although reasonable care has been taken to ensure that the information contained on this Site is accurate, We do not warrant, represent or undertake that:

- (a) the Site will meet your needs or expectations, or that it will be uninterrupted, timely, secure, error-free or free from viruses; or
- (b) the information obtained from or available on the Site will be accurate, reliable or fit for purpose.

Use of information contained on the Site is at your own risk and we are not responsible for any adverse consequences arising out of such use.

**Indemnification** You agree to indemnify and keep Us indemnified from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation direct losses,

consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with your breach of these Terms and Conditions.

### **Affiliates and other Links**

We do not review, monitor or endorse any third party web sites linked to Our Site and We are not responsible for the content of any web site linked to Our Site. Your access to any web site that links to Our Site is at your sole risk. We are not responsible for the information, material, products, or services contained on or accessible through such other web sites and will not be liable for any form of loss or damage arising as a result of or in connection with your visits to such web sites.

Any links to other web sites are provided merely for the convenience of the users of this Site and the inclusion of these links does not imply an endorsement of the linked web sites or the content therein. In addition, you agree not to link your web site or any other third party web site to Our Site or frame Our Site as part of any other web site without Our express prior written consent.

To request such consent, you may send an e-mail message to the following address [info@thezanzibarcollection.com](mailto:info@thezanzibarcollection.com). We reserve the right, at any time and for any reason not prohibited by law, to deny permission to anyone to link a web site to, or frame, Our Site. We reserve the right to withdraw Our consent at any time to a link to, or framing of, Our Site at Our sole discretion without notice.

### **Copyright and Trade Marks**

All intellectual property rights, including without limitation copyright in all content on the Site, are owned by Us or by Our



licensors.

The TZC trade marks (“Trade Marks”) are the sole property of Us or Our licensors. You may only use and/or reproduce the Trade Marks with our express written consent.

Except where necessary for and incidental to personally viewing the Site through your web browser, or as permitted by these Terms of Use or under applicable laws, no part of the Site may be reproduced, stored (for any period of time) in an electronic or any other retrieval system, modified, adapted, uploaded to a third party location, framed, performed in public, or transmitted, in any form by any process whatsoever, without Our express prior written consent.

### **Governing Law and Jurisdiction**

Your use of this Site and the operation of these Terms and Conditions shall be governed by and construed in accordance with the laws of Kenya. You agree, acknowledge, and submit to the Courts of Nairobi having non-exclusive jurisdiction over all and any dispute or difference between us arising out of or in connection with this Agreement.

**Waiver** Our failure to enforce the strict performance of any provision of these Terms and Conditions or the documents it incorporates by reference will not constitute a waiver of Our right to subsequently enforce such provision or any other provisions of these Terms and Conditions or the documents it incorporates by reference.

**Severability** If any provision (or part thereof), of these Terms or Conditions shall be deemed unlawful, void, or for any reason unenforceable then that provision shall be deemed severable from these Terms and Conditions and shall not affect the validity and enforceability of any remaining provisions.

## **Assignment**

We may perform any of our obligations, and exercise any of the rights granted to us under these Terms and Conditions, through a third party. We may assign, novate, sub-contract or otherwise transfer any or all of our rights and obligations under these Terms and Conditions to any third party.

## **Complete Agreement**

These Terms and Conditions and the documents incorporated by reference constitute all the terms of your agreement with us relating to your use of this Site. Save as otherwise provided in these Terms and Conditions and the documents incorporated by reference, you acknowledge that you shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently) made by Us, the TZC Entities, any of Our or TZC Entities' staff, directors, agents, consultants or representatives (and whether authorised or not for this purpose).

## **Contact Us**

If you have any questions, concerns or complaints in relation to the Site or these Terms and Conditions please contact us by sending an email to [info@thezanzibarcollection.com](mailto:info@thezanzibarcollection.com)

## Privacy & Cookies Policy

References to "our", "us" or "we" within this policy are to TZC and our affiliated businesses as described below.

TZC is a branch of TAS Nairobi Kenya

Please read the following information carefully to understand our views and practices regarding your personal data and how we will look after it.

We take your privacy very seriously and we endeavour, where reasonably possible, to follow best practice in protecting your personal data.

### Our Facilities and Services

TZC facilities and services, including those whose details are available as described below, are owned and/or managed by companies which form part of the same corporate group as TZC and by other third parties whose details appear alongside the name of the relevant business or, in the case of the entity which owns the relevant business, are available by contacting us at [info@thezanzibarcollection.com](mailto:info@thezanzibarcollection.com) In this policy such companies and third parties are referred to as "affiliated businesses". Details of the TZC facilities and services can be provided on request or can be found on this website. Please contact [info@thezanzibarcollection.com](mailto:info@thezanzibarcollection.com) for details .

### Information we may collect about you

We may collect and process the following data about you:

- Your name, address, telephone number, email address, date of birth and nationality and any other information which may appear in your passport or other piece of formal identification;
- Information that you provide to us, for example by filling in forms (both online and offline), over the telephone and through written correspondence with us;
- Information about your use of our facilities and services and your preferences in this regard;
- Details of purchases you make from us and the preferences you express to us; and
- Details of your visits to our websites including traffic data and details of the resources that you access.

Some of the data we collect and process will include sensitive data. Sensitive data is data which, for example, relates to your health or religion.

We do not knowingly collect personally identifiable information from individuals under the age of 18 years. If you are under the age of 18, please do not provide your name and address or other contact details or any other personally identifiable information of any kind whatsoever. If you are a parent or guardian of someone under the age of 18 who has provided us information without your knowledge and consent, you may request that we remove this information by contacting us at [info@thezanzibarcollection.com](mailto:info@thezanzibarcollection.com)

## How we use cookies

Our website uses cookies and similar technology. A cookie is a small file of letters and numbers that our website places on your computer, or other equipment which you use to access our website. These cookies allow us to distinguish you from other users of our website. You can read more about cookies and how to recognise them at [www.aboutcookies.org](http://www.aboutcookies.org).

Cookies perform many functions, such as allowing you to navigate between pages efficiently, remembering your preferences, and generally improving the user experience. They can also help to ensure that advertising that you see online is more relevant to you and your interests.

The cookies used on this website have been categorised based on the categories found in the ICC UK Cookie guide. A list of all cookies used on this website by category is set out below.

Type of cookie	What does it do?
Strictly necessary cookies	These cookies are essential in order to enable you to move around the website and use its features, such as accessing secure areas of the website. Without these cookies services you have asked for, like room bookings or e-payment, cannot be provided.
Performance cookies	These cookies collect information about how you use our website, for instance which pages you go to most often, and if you receive error messages from certain web pages. These cookies do not collect information that identifies you. All information these cookies collect is aggregated and therefore anonymous. It is only used to improve how the website works. By using our website, you agree that we can place these types of cookies on your device.
Functionality cookies	These cookies allow the website to remember choices you make (such as your language of choice or the region you are in) and provide enhanced, more personal features. These cookies can also be used to remember changes you have made to text size, fonts and other parts of the web pages that you can customise. They may also be used to provide services you have asked for such as watching a video or commenting on a message board. The information

	<p>these cookies collect may be anonymised and they cannot track your browsing activity on websites operated by third parties. By using our website, you agree that we can place these types of cookies on your device.</p>
<p>Targeting or advertising cookies</p>	<p>These cookies are used to deliver adverts more relevant to you and your interests. They are also used to limit the number of times you see an advertisement as well as help measure the effectiveness of our advertising campaigns. They also remember when you have visited the website before. Sometimes we share anonymised information about your browsing activity with our advertising and creative partners. They may use this information to advertise products, which may interest you, on other websites or to assist us develop future advertising campaigns.</p>

Your web browser includes an option that allows you to refuse cookies. However, if you do so, you may not be able to access parts of our website and it may make your browsing experience less enjoyable. Unless you have adjusted your browser setting so that it will refuse cookies, our system will issue cookies as described above when you access our website. If you would like to delete any cookies on your computer please refer to your browser manufacturer's instructions by clicking 'help' in your browser menu.

How we store your personal data All information you provide to us via our website is stored on our secure servers. Any payment transactions carried out via our website will be encrypted using Secure Socket Layer technology.

TZC International has taken several steps to safeguard the integrity of its communications and computing infrastructure, including by implementing authentication, monitoring, auditing, and encryption technology. Security measures have been integrated into the design, implementation, and day-to-day operations of this website as part of our continuing commitment to the security of electronic content and

the electronic transmission of information. Despite our best efforts unfortunately the transmission of information via the internet is not completely secure. Although we have strict procedures and security measures in place, we cannot guarantee the security of your data transmitted to our site. Any transmission of data online is carried out at your own risk.

Your data may be transferred to, and stored in various other destinations outside the European Economic Area ("the EEA"), In submitting your data to us and using our facilities and services, you acknowledge that your data may be sent to countries with laws which afford a lesser degree of protection to your personal data.

Where we have given you (or where you have chosen) a password or code which enables you to access certain parts of our website, you are responsible for keeping this password or code confidential.

Your data will be stored for a period no longer than is necessary for the purposes for which they have been obtained.

How we use your personal data

We may use information collected about you in the following ways:

- to improve (or seek to improve) the services we provide to you and to enable us to provide you with a more personalised experience;
- to communicate with you about our products and services and those of specially selected third parties, including our key partners.
- for internal marketing analysis, for example, to assess trends or to measure the amount of traffic to our websites.

If you submit your résumé through our website, we will only use

your personal data in considering your application for employment. The information you provide will not be shared with any third parties.

## Sharing your personal data

TZC is a Nairobi organisation and part of the TZC group of companies. We may share your personal data with our affiliated businesses.

We may also share your personal data with our service providers who perform functions on our behalf or provide services to us, such as marketing and advertising, data processing, market research, warehousing and delivery, information technology, office services, legal, accounting, insurance, audit and other professional services.

We may be required to share your information with third parties in the event that we, or one of our affiliated businesses, sell or buy any business or assets.

We may also share your personal data, if permitted, or required to do so by law, in connection with any legal claims or to comply with our audit and security requirements. If legally requested by the relevant authority, we may also disclose your data to the local police, CID and immigration authorities.

If you do not want us to pass your details on to third parties for marketing purposes, please see the 'Marketing' section below for information on how to opt-out.

## Marketing



If you are a new customer, you will be able to choose whether or not to receive marketing communications when you first provide us with your personal data. When we send marketing communications to you by email or SMS, you will also be given an opportunity to unsubscribe from such communications. You may also opt out of receiving marketing communications from us at any time by informing us at the following email address: [info@thezanzibarcollection.com](mailto:info@thezanzibarcollection.com)

### Personal data relating to third parties

By submitting the personal data of a third party to us you confirm that you have their consent to do so.

### Third Party links

The TZC Group's websites may from time to time provide links to or from third party websites or resources for you to access at your sole discretion. Please note that any such third party website or resource may collect and use your personal data in a different manner to us. We do not endorse or accept any liability for the data collection practices, privacy policies or the content of any website linked from our websites or which links to them. You should contact the owner or operator of any such website directly if you wish to enquire about their privacy practices and policies, before providing your personal data to them.

### Your rights

You can request access to, rectification or deletion of your personal data held by us at any time by contacting us at [info@thezanzibarcollection.com](mailto:info@thezanzibarcollection.com)

## Changes to Privacy Policy

We reserve the right to update this privacy policy from time to time as we expand our services and products, or to endeavour, where reasonably possible, to comply with applicable legislation. Any changes we may make to our privacy policy in the future will be posted on this page and, where appropriate, notified to you by email.

## Identity Theft - Phishing Alert

Identity theft can be committed by e-mail or via other means, such as regular mail, fax or telephone, or even by going through someone's trash. Identity theft occurs when someone uses another genuine person's personal or professional information such as their name, email address, professional designation or other identifying information without their permission to commit fraud or other illegal activity.

Internet fraudsters and scam artists are increasingly targeting unsuspecting people by a method called PHISHING. Phishing is when you receive an authentic-looking email which purports to come from an official source or reputable business, but in reality is sent by criminals from a similar looking email address and which encourages you to provide personal or financial information. This information can be used for fraudulent purposes or to carry out illegal activity.

### How to protect yourself from phishing

Please remember that TZC and its affiliated businesses will never send unsolicited emails which ask you to provide personal or financial information or request you to confirm details of business transactions by email. If you receive an e-mail requesting such details, please do not respond or click on any links or attachments in the email.

TZC's official communications are never sent from personal email addresses hosted on public domains such as yahoo, hotmail or gmail. If you are suspicious, please verify the sender email address carefully.

Other than email confirmations sent from an official TZC email address (@thezanzibarcollection.com @breezes-zanzibar.com @baraza-zanzibar.com @palms-zanzibar.com @ risingsun-zanzibar.com @palacina.com @tourafrica.co.ke @fusillo.me @fusillo.io @mswakini.com @mswakini.me) for bookings made via our website (www.thezanzibarcollection.com, [www.palms-zanzibar.com](http://www.palms-zanzibar.com), [www.breezes-zanzibar.com](http://www.breezes-zanzibar.com), [www.baraza-zanzibar.com](http://www.baraza-zanzibar.com), [www.mswakini.com](http://www.mswakini.com), [www.risingsun-zanzibar.com](http://www.risingsun-zanzibar.com)), TZC does not conduct or approve financial transactions over email.

What to do if you suspect you have received a phishing email

1. Do not reply.
2. Do not open any attachments. Attachments may contain malicious code that will infect your computer.
3. Do not click on any links included in the email.

If you are concerned that you have received a phishing email which purports to be from TZC, or that you have been victim to any similar scam which names TZC, please forward the suspect email to [info@thezanzibarcollection.com](mailto:info@thezanzibarcollection.com) for us to take necessary action.

The information and recommendations provided above are for information only to assist you manage the security of your own personal data. Neither TZC nor any of its affiliated businesses accept any liability for phishing emails, or any other scam communications, you may receive or any loss you may suffer as a result.