

## **AFRICA OYÉ – TRADERS’ TERMS AND CONDITIONS**

### **1. INTERPRETATION**

1.1 In these Conditions, the following definitions apply:

Charges:	the charges payable by the Trader in accordance with clause 5, which shall be inclusive of electricity charges;
Commencement Date:	has the meaning set out in clause 2.2;
Conditions:	these terms and conditions as amended from time to time in accordance with clause 9.5;
Contract:	the contract between the Organiser and the Trader for the grant of the Rights in accordance with the Order and these Conditions;
Deposit:	fifty (50) per cent of the Charges, which shall be paid by the Trader to the Organiser at the time of submission of the Order;
Designated Hours:	the hours between 12.30 and 21.30;
Event:	the Africa Oyé Music Festival organised by the Organiser, which is to take place at the Venue during the Festival Period;
Festival Period:	Saturday 17th and Sunday 18th June 2023;
Order:	the Trader’s completion and submission of an application form for the Event;
Organiser:	Africa Oyé registered in England and Wales with company number 03120728 whose registered office address is Africa Oyé 11 Seymour Terrace, Seymour Street, Liverpool, L3 5PE
Rights:	the rights granted by the Organiser to the Trader (in common with the Organiser and all others authorised by the Organiser so far as is not inconsistent with the rights given to the Trader) for the Trader or persons properly authorised by the Trader to use the Venue for the Festival Period during the Set Up Hours and the Designated Hours;
Set Up Hours:	the hours between 9.00 am and 1800 hrs on 18th, June, 09.00 on 18th & 19th June 2022 the entity who is granted the Rights by the Organiser;
Trader:	The entity who is granted the Rights by the Organiser
Venue:	Review Field, Sefton Park, Liverpool, L17 3AG

### **2. BASIS OF CONTRACT**

- 2.1 The Order and payment of the Deposit constitutes an offer by the Trader to acquire the Rights in accordance with these Conditions.
- 2.2. The Order shall only be deemed to be accepted when the Organiser informs the Trader that the Order has been accepted, at which point and on which date the Contract shall come into existence (Commencement Date).

- 2.3. Acceptance of Orders shall be subject to availability. The Organiser is not obliged to accept any Order and is not required to provide any reasons to the Trader for such non-acceptance. The decision of the Organiser shall be final.
- 2.4. If the Organiser does not accept an Order, the Organiser shall return the Deposit to the Trader promptly and without undue delay.
- 2.5. The Contract constitutes the entire agreement between the parties. The Trader acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Organiser which is not set out in the Contract.
- 2.6. These Conditions apply to the Contract to the exclusion of any other terms that the Trader seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### **3. GRANT OF THE RIGHTS**

The Organiser shall grant the Rights to the Trader further to the Organiser's acceptance of the Order and the Trader's payment of the Charges.

The Organiser shall use reasonable endeavours to meet any performance dates but time shall not be of the essence for granting of the Rights.

The Order shall only be deemed to be accepted when the Organiser informs the Trader that the Order has been accepted, at which point and on which date the Contract shall come into existence (Commencement Date).

Acceptance of Orders shall be subject to availability. The Organiser is not obliged to accept any Order and is not required to provide any reasons to the Trader for such non-acceptance. The decision of the Organiser shall be final.

If the Organiser does not accept an Order, the Organiser shall return the Deposit to the Trader promptly and without undue delay.

The Organiser shall have the right to make any changes to the Rights which are necessary to comply with any applicable law or safety requirements, or which do not materially affect the nature or quality of the Rights, and the Organiser shall notify the Trader in any such event.

The Organiser gives no warranty that the Venue is legally fit for any specific purpose.

### **4. TRADER'S OBLIGATIONS**

4.1 The Trader shall:

- 4.1.1 co-operate with and not impede the Organiser, the Event's security staff, their agents and employees in all matters relating to the Rights;
- 4.1.2 provide the Organiser with accurate dimensions of the Trader's stall in advance of the Event and acknowledges that failure to do so may result in cancellation of the Contract and the Organiser retaining the Charges without refund in full or part;
- 4.1.3 undertake a full risk assessment of the potential hazards associated with their equipment (including all electrical equipment to be used by the Trader) and products associated with their trade at the Event and submit written copies of the same to the Organiser with the Order;

- 4.1.4 reasonable endeavours to keep the prices for their products and services at reasonable rates and, where possible, offer discounted rates for family purchases;
- 4.1.5 not under any circumstances sell, serve or supply alcohol at the Event. The Trader acknowledges that failure to comply with this condition will result in the Trader forfeiting their right to trade at the Event, the cancellation of the Contract and the Organiser retaining the Charges without refund in full or part;
- 4.1.6 only sell such products and services applicable for the relevant category stated in the Order. The Trader acknowledges that failure to comply with this condition will result in the Trader being required to pay such additional Charges as the Organiser shall reasonably require. Any failure to pay such additional Charges on demand shall result in the Trader forfeiting their right to trade at the Event and the cancellation of the Contract without refund in full or part of the Charges;
- 4.1.7 provide their own supplies, All food must be served in/on disposables made from either wood, paper/cardboard or leaves equipment, seating, furniture, electrical equipment and potable (suitable for drinking/cooking) water and shall provide the Organiser with details (photos, drawings, plans etc) of the same at the time of submitting the Order;
- 4.1.8 arrive at the Event no earlier than the Set Up Hours and be ready to trade by the Designated Hours and the Trader acknowledges that all vehicles must be parked in designated areas outside of the Designated Hours. The Organiser shall send details of parking arrangements to the Trader before the Festival Period;
- 4.1.9 provide the Traders' Manager with all information for any vehicle that they need onsite at any point. Requested and accepted vehicles will be granted a vehicle pass which the trader must collect from the Traders' Manager before they enter the site. Any vehicle not displaying a vehicle pass will be towed from the site;
- 4.1.10 may camp overnight at the Event site on the evenings of Friday 17th June 2022 and Saturday 18th June 2022 but do so entirely at their own risk. The Trader acknowledges that the Organiser shall not be liable for any loss or damage to the Trader's property at the Venue;
- 4.1.11 ensure that all electrical appliances to be used in association with their trade at the Event are in good condition, are at all times correctly stored and that fire extinguishers and blankets have been brought to the Event and are readily available for use if necessary. The Trader acknowledges that gas powered devices are permitted on-site only in compliance with fire, health & safety and that any failure to comply with this condition will result in the Trader forfeiting their right to trade at the Event, the cancellation of the Contract and the Organiser retaining the Charges without refund in full or part;
- 4.1.12 keep their trading areas clean, tidy and clear of rubbish during the Festival Period;
- 4.1.13 keep any music they or any DJs are playing at their stall to a respectful level that does not interfere with the MainStage or DJ stage performances. The Traders' Manager maintains the right to ask for the volume to be changed, or music turned off at their discretion. There is to be, with no exception, live music of any kind at traders' stalls;
- 4.1.14 comply with all applicable health and safety legislation, trading standards and rules and regulations (which the Organiser shall notify to the Trader from time to time) governing the use of the Venue. The Trader acknowledges that any failure to comply with this condition will result in the Trader forfeiting their right to trade at the Event, the cancellation of the Contract and the Organiser retaining the Charges without refund in full or part;

- 4.1.15 not use the Venue in any way which would or might cause a nuisance, damage or disturbance, annoyance, inconvenience or interference to any neighbouring property or other traders at the Event;
  - 4.1.16 not sub-license the Rights to any other person;
  - 4.1.17 be required to produce upon request their signed Order acknowledgement form in order to gain access to the Venue and at all times during the Designated Hours whilst at the Venue;
  - 4.1.18 obtain and maintain all necessary licenses, permissions, consents, PAT certificates and all necessary insurance policies (including public liability insurance, product liability insurance and employer's liability insurance where applicable) which may be required before or during the Festival Period;
  - 4.1.19 indemnify the Organiser and keep the Organiser indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liabilities arising;
  - 4.1.20 in any way from the Contract resulting directly or indirectly from any breach by the Trader of any of the Trader's warranties or undertakings; or
  - 4.1.21 as a direct or indirect result or consequence of any action or omission by the Trader or its authorised personnel in the exercise or purported exercise of the Rights.
- 4.2 If the Organiser's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Trader or failure by the Trader to perform any relevant obligation (Trader Default):
- 4.2.1 the Organiser shall without limiting its other rights or remedies have the right to suspend the granting of the Rights until the Trader remedies the Trader Default, and to rely on the Trader Default to relieve it from the performance of any of its obligations to the extent the Trader Default prevents or delays the Organiser's performance of any of its obligations;
  - 4.2.2 the Organiser shall not be liable for any costs or losses sustained or incurred by the Trader arising directly or indirectly from the Organiser's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - 4.2.3 the Trader shall reimburse the Organiser on written demand for any costs or losses sustained or incurred by the Organiser arising directly or indirectly from the Trader Default.

## **5. CHARGES AND PAYMENT**

- 5.1 The Charges shall be as set out in the application form, which is attached to these Conditions.
- 5.2 The Organiser shall be under no obligation to grant the Rights until payment of the Charges is received in full.
- 5.3 Important - The Trader shall pay:
  - 5.3.1 the Deposit by no later than 5pm on Friday 25th March 2022; and
  - 5.3.2 the Charges by no later than 5pm on Friday 15th April 2022 (the Due Date), in full and in cleared funds to a bank account nominated in writing by the Organiser and time for payment shall be of the essence of the Contract.

- 5.4 Without limiting any other right or remedy of the Organiser, if the Trader fails to make any payment due to the Organiser under the Contract by the Due Date, the Organiser shall have the right to retain the Deposit without deduction and the Trader shall forfeit its right to trade at the Event.
- 5.5 The Trader shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Trader shall not be entitled to assert any credit, set-off or counterclaim against the Organiser in order to justify withholding payment of any such amount in whole or in part. The Organiser may, without limiting its other rights or remedies, set off any amount owing to it by the Trader against any amount payable by the Organiser to the Trader.

## **6. LIMITATION OF LIABILITY:**

- 6.1 Nothing in these Conditions shall limit or exclude the Organiser's liability for:
- 6.1.1 death or personal injury caused by its negligence, or the negligence of its employees or agents; or
- 6.1.2 fraud or fraudulent misrepresentation.
- 6.2 Subject to clause 6.1:
- 6.2.1 the Organiser shall under no circumstances be liable to the Trader, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 6.2.2 the Organiser's total liability to the Trader in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount of the Charges paid to the Organiser by the Trader.
- 6.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 6.4 This clause 6 shall survive termination of the Contract.

## **7. TERMINATION**

- 7.1 Without limiting its other rights or remedies, the Organiser may terminate the Contract with immediate effect by giving written notice to the Trader if the Trader fails to pay any amount due under this Contract on the Due Date.
- 7.2 The Trader may terminate the Contract by providing the Organiser with written notice by no later than Tuesday 10th May 2022. If notice is provided by this date, the Organiser shall refund the Trader fifty (50) per cent of the Charges which have been paid by the Trader to the Organiser. Failure to provide written notice by this date will result in the Trader forfeiting all Charges which have been paid by the Trader to the Organiser.
- 7.3 If, further to an event outside of the Organiser's control (clause 9.4) or for any other reason, the Event is cancelled, the Trader will be notified by the Organiser, the Contract shall be terminated with immediate effect and the Organiser shall not be obliged to refund any charges to the Trader.
- 7.4 If, further to cancellation of the Event, a substitute event is organised, trading sites will be allocated on a first come first served basis. If a Trader's substitute Order for such an event is accepted by the Organiser, no refund of the Charges previously paid shall be payable to the Trader and no further Charges shall be payable by the Trader to the Organiser

providing the Order for the substitute services is the same as those previously ordered by the Trader.

## **8. CONSEQUENCES OF TERMINATION**

8.1 On termination of the Contract for any reason:

8.1.1 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

8.1.2 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **9. GENERAL**

9.1 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

9.2 The Rights are personal to the Trader and shall not be assigned or sub-licensed without the prior written consent of the Organiser.

9.3 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

9.4 Important - Events outside of the Organiser's control: The Organiser shall not be liable for failure to perform any of its obligations whether wholly or in part if such failure is caused wholly or in part by any circumstance or event outside of the Organiser's control. This condition includes those circumstances where the Event is cancelled due to adverse weather.

9.5 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Organiser.

9.6 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.