

Soul Free Adventures (Aust) Pty Ltd T/A Australian Walking Tours – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Seller" shall mean Soul Free Adventures (Aust) Pty Ltd T/A Australian Walking Tours its successors and assigns or any person acting on behalf of and with the authority Soul Free Adventures (Aust) Pty Ltd T/A Australian Walking Tours.</p> <p>1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Seller to the Client.</p> <p>1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.</p> <p>1.4 "Services" shall mean all Services supplied by the Seller to the Client and includes any advice or recommendations.</p> <p>1.5 "Price" shall mean the price payable for the Services as agreed between the Seller and the Client in accordance with clause 3 of this contract.</p> <p>2. Acceptance</p> <p>2.1 Any instructions received by the Seller from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.</p> <p>2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.</p> <p>2.3 The Client acknowledges that there will be a deposit of 30% of the total cost of the trip due at the time of booking.</p> <p>2.4 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Seller.</p> <p>2.5 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.</p> <p>3. Price And Payment</p> <p>3.1 At the Seller's sole discretion the Price shall be either:</p> <p>(a) as indicated on invoices provided by the Seller to the Client in respect of Services supplied; or</p> <p>(b) the Seller's quoted Price (subject to clause 3.2 which shall be binding upon the Seller provided that the Client shall accept the Seller's quotation in writing within thirty (30) days.</p> <p>3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.</p> <p>3.3 At the Seller's sole discretion a deposit may be required.</p> <p>3.4 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.</p> <p>3.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to three percent (3% of the Price), or by direct credit, or by any other method as agreed to between the Client and the Seller.</p> <p>3.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.</p> <p>4. Delivery Of Services</p> <p>4.1 At the Seller's sole discretion delivery of the Services shall take place when:</p> <p>(a) the Client takes possession of the Services at the Seller's address; or</p> <p>(b) the Client takes possession of the Services at the Client's nominated address (in the event that the Services are delivered by the Seller or the Seller's nominated carrier); or</p> <p>(c) the Client's nominated carrier takes possession of the Services in which event the carrier shall be deemed to be the Client's agent.</p> <p>4.2 At the Seller's sole discretion the costs of Delivery are:</p> <p>(a) included in the Price; or</p> <p>(b) in addition to the Price; or</p> <p>(c) for the Client's account.</p> <p>4.3 The Client shall make all arrangements necessary to take delivery of the Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Services as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.</p> <p>4.4 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.</p> <p>4.5 The Seller may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.</p> <p>4.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.</p> <p>4.7 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Services (or any of them) promptly or at all.</p> <p>5. Risk</p> <p>5.1 If the Seller retains ownership of the Services nonetheless, all risk for the Services passes to the Client on delivery.</p> <p>5.2 The Client acknowledges that:</p> <p>(a) by the very nature of adventure travel, they are more challenging and demanding with a commensurately higher level of risk compared with conventional holidays; and</p> <p>(b) in the countries and regions in which adventure travel is undertaken, standards of accommodation, transport, health care, hygiene, safety and service provision generally are often not as high as those standards in your country of residence and may require flexibility and patience on your part; and</p> <p>(c) operational control of the tour may be in the hands of a third party and that your right of action in regard to any shortcomings of that third party's performance is against the third party and not against the Seller; and</p> <p>(d) the additional dangers and risk associated with adventure travel may include difficult and dangerous terrain, high altitude, extremes of weather, including sudden and unexpected changes, political instability, remoteness from normal medical services and from communications, and evacuation difficulties in the event of illness or injury; and</p> <p>(e) the employment and excitement of adventure travel is derived in part from the inherent dangers and risks associated with adventure travel and that those inherent dangers and risks are a reason why you wish to undertake the adventure tour; and</p> <p>(f) the Client has submitted your booking for the tour after giving due consideration of relevant travel information including, without limitation, any relevant information or advice given by the government of Australia and that it is the Client's responsibility to acquaint themselves with that information or advice.</p> <p>5.3 The Client therefore, for the reasons outlined above accept the inherent and increased dangers and risks associated with the proposed adventure tour and the accompanying risks associated with the proposed adventure tour and the accompanying risk of injury, death or property damage or loss.</p> <p>6. Title</p> <p>6.1 The Seller and the Client agree that ownership of the Services shall not pass until:</p> <p>(a) the Client has paid the Seller all amounts owing for the particular Services; and</p>	<p>(b) the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.</p> <p>6.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Services shall continue.</p> <p>6.3 It is further agreed that:</p> <p>(a) until such time as ownership of the Services shall pass from the Seller to the Client the Seller may give notice in writing to the Client to return the Services or any of them to the Seller. Upon such notice the rights of the Client to obtain ownership or any other interest in the Services shall cease.</p> <p>(b) if the Client fails to return the Services to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Services are situated and take possession of the Services.</p> <p>7. Client's Disclaimer</p> <p>7.1 The Client hereby disclaims any right to rescind, or cancel the contract with the Seller or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Seller and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgment.</p> <p>7.2 The Client acknowledges that the Seller is not liable for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.</p> <p>7.3 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.</p> <p>7.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:</p> <p>(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to meet its payments as they fall due; or</p> <p>(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>7.5 The Seller shall be entitled to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.</p> <p>7.6 The Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 10.1.</p> <p>11. Cancellation</p> <p>11.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.</p> <p>11.2 Loss of monies paid applies to all cancelled reservations. The date of trip cancellation is the date on which the written cancellation is received by Seller. The loss of monies paid is as follows:</p> <p>(a) 60 days or more prior to trip departure – Loss of deposit or credit to another departure in the same travel session. All Deposits are non-refundable. Where the full tour price was paid at the time of booking cancellation shall result in the loss of the equivalent deposit amount (30% of full tour price).</p> <p>(b) Between 30 and 59 days prior to trip departure – 50% of total booking cost or loss of deposit, whichever is the greater.</p> <p>(c) Less than 30 days prior to departure – 100% of total booking cost.</p> <p>11.3 No refund will be made if you voluntarily leave a trip for any reason after the trip has begun. Refunds will be at the discretion of the Seller if you are involuntarily forced to leave a trip for any reason. No refunds will be made for any accommodation, transport, sightseeing, meals or services not utilised. Please Note that these conditions apply to tour content booked with the Seller only. You are strongly advised to take out cancellation insurance at the time of booking which will cover cancellation penalties in certain circumstances (Please Note: such insurance does not cover a change of mind).</p> <p>12. Route Changes, Postponement, Cancellation or Delay</p> <p>12.1 The Seller reserves the right to:</p>	<p>(a) change the date of departure or conclusion of the tour, or</p> <p>(b) modify any aspect of the tour, or</p> <p>(c) cancel or modify any routes within the tour or objectives set out in the itinerary, or</p> <p>(d) substitute different or equivalent routes within the tour in place of cancelled or modified routes, or</p> <p>(e) postpone, cancel or delay (either in relation to the departure or arrival times or the duration of the tour) any such aspect of the tour.</p> <p>12.2 If, in the absolute discretion of the Seller, it is necessary to do so due to inclement weather, snow or icy conditions or conditions that are otherwise likely to be hazardous or dangerous or due to any other adverse or threatening conditions whether political or military or terrorist or otherwise or if, in the absolute discretion of the Seller, there is a likelihood of any such event occurring which may impact upon the safety of the participants, or if an act or omission of a third party prevents the tour or the aspect of the tour being undertaken in accordance with the Client's booking. In the event of any change, modification, cancellation postponement or delay under this condition, the Client acknowledges that the Client will have no right to refund of the tour price (whether in whole or in part) and no right to claim compensation for any injury, loss or damage or other additional expenses incurred by virtue of the change, modification, cancellation postponement or delay.</p> <p>12.3 The Seller also reserves, in its absolute discretion, the right to cancel any tour due to any government travel warning or advice, or any change in such warning or advice.</p> <p>13. Privacy Act 1988</p> <p>13.1 The Client and/or the Guarantor agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Seller.</p> <p>13.2 The Client and/or the Guarantor/s agree that the Seller may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:</p> <p>(a) to assess an application by the Client; and/or</p> <p>(b) to notify other credit providers of a default by the Client; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or</p> <p>(d) to assess the credit worthiness of Client and/or Guarantor/s.</p> <p>13.3 The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).</p> <p>13.4 The Client agrees that personal credit information provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Client and Seller or required by law from time to time:</p> <p>(a) provision of Services; and/or</p> <p>(b) marketing of Services by the Seller, its agents or distributors in relation to the Services; and/or</p> <p>(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or</p> <p>(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or</p> <p>(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.</p> <p>13.5 The Seller may give information about the Client to a credit reporting agency for the following purposes:</p> <p>(a) to obtain a consumer credit report about the Client; and/or</p> <p>(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.</p> <p>14. Release and Waiver of Liability</p> <p>14.1 In consideration of the Seller's accepting your booking application and in consideration of you being permitted by the Seller to join the tour:</p> <p>(a) The Client releases the Seller and its officers, employees, agents, licensees, guides and other representatives and the land management authorities in the countries in which the tour is conducted (each of whom are collectively referred to as the "Seller's and its employees") from all cost, liability, loss or damage incurred or suffered by you directly or indirectly during the course of the tour and resulting from your personal injury, illness or death or damage to or loss of your property unless caused by the willful negligence or wrongful act of the Seller and its employees; and/or</p> <p>(b) The Client waives any claims you have, or may at any time have, against the Seller and its employees and you agree, by accepting the additional inherent dangers and risks associated with the tour, not to make any claim against or seek any compensation from the Seller and its employees in respect of any personal injury, illness or death suffered by you or damage to or loss of property sustained by you as a result of your participation in the tour.</p> <p>15. General</p> <p>15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.</p> <p>15.3 The Seller shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions.</p> <p>15.4 In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.</p> <p>15.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Seller.</p> <p>15.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.</p> <p>15.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client of such change.</p> <p>15.8 If the Seller is prevented (directly or indirectly) from performing any of its obligations under this agreement by reason of act of God, strikes, trade disputes, fire, breakdown, interruption of transport, government or political action, acts of war or terrorism, acts or omissions of a third party or for any other cause whatsoever outside the Seller's reasonable control. The Seller will be under no liability whatsoever to you and may, at its option, by written notice to you either cancel the tour or take any other action as specified in clause 12.</p> <p>15.9 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.</p>
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