

On The Verandah 27.06.24
TERMS AND CONDITIONS
ACTIVITIES – KIMBERLEY

1 General

- 1.1 These Terms and Conditions ("T&C") apply to the Booking made by the Customer with the Provider.
- 1.2 By making a Booking (directly or through a third party), the Customer agrees to these T&C's for themselves and for all persons included in the Booking and each such person shall be jointly and severally bound by these T&C's.

2 Definitions

"Activity" means any tour, event or attraction and any incidental activities thereto.

"Authority" means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person, including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

"Booking" means booking the Activity.

"Cancellation Fee" means:

- (a) such portion of the Cost as referred to in clause 4; or
- (b) such other amount as stipulated by the Provider from time to time.

"Cost" means the total amount payable to the Provider by the Customer for the Activity.

"Customer" "You" or "Your" means the person making the Booking (and includes all persons included in the Booking).

"Deposit" means a non-refundable and non-transferrable payment made to the Provider at the time of Booking.

"Force Majeure Event" means any occurrence or non-occurrence as a direct or indirect result of which a party is prevented from or delayed in performing any of its obligations and that is beyond the reasonable control of that party, including:

- (a) inability to obtain goods, supplies or services, including fuel, accommodation or access to an attraction;
- (b) forces of nature (including fire, earthquake, storm, flood or other casualty or accident);
- (c) war, civil strife or other violence;
- (d) industrial action, or any action or inaction by a Authority;

- (e) any law, order, proclamation, regulation, ordinance, action, demand or requirement of any Authority; and
- (f) epidemic or pandemic to the extent that restrictions (including lockdown and quarantine restrictions) are imposed by any Authority.

“Goods” means all property, equipment of any nature, facilities, chattels, fixtures and fittings, and goods of any description.

“including” is deemed to be followed by the words “without limitation”.

“Provider” “We” “Us” or “Our” means [the business entity], its Representatives and assigns.

“Representatives” means the agents, directors, officers, contractors, volunteers or employees of the Provider.

“Waiver” means the Waiver, Release, Discharge and Indemnity published by the Provider and accepted by the Customer at the time of making the Booking.

3 Bookings

- 3.1 A Booking is subject to availability.
- 3.2 The Provider reserves the right to decline any Booking or requests at its absolute discretion.
- 3.3 Unless otherwise determined by the Provider prior to or at the time of Booking, the following provisions apply:
 - (a) The Deposit shall be paid at the time of Booking;
 - (b) payment of the balance of the Cost is required [60] days prior to commencement of the Activity;
 - (c) if the Booking is made within [60] days of the commencement of the Activity, full payment of the Cost is required at the time of Booking;
 - (d) a list identifying all persons participating in the Activity is to be provided at the time of Booking;

Specials / Packages:

- (e) The Provider reserves the right to promote / offer the Activity on terms and conditions different to the T&C (including as to Cost, Deposit, payment terms and Cancellation Fee) at its discretion and for each Booking therein made those terms and conditions shall prevail over the T&C with respect to any inconsistency.
- 3.4 A valid credit card is required at the time of Booking. Your credit card will be held as security for your Booking and utilised for any payments, outstanding charges, Cancellation Fees, no-show fees, damage and any breach of these T&C's.
- 3.5 Failure by the Customer to make payment as required in accordance with the T&C, or as otherwise requested by the Provider, may result in the

Booking being cancelled and the Provider making available the Activity, or any part thereof, to other persons.

- 3.6 If the Customer makes payment by way of credit card, the Customer warrants that the information provided to the Provider is true and complete, that the Customer is authorised to use the credit card to make payment and that the Customer's payment will be honoured by the credit card issuer.

4 Cancellation

- 4.1 All cancellations must be in writing and sent to the Provider. It is the Customer's responsibility to ensure the Provider has received notice of any cancellation of the Booking.

- 4.2 Subject to these Terms and conditions, where the Customer cancels the Booking:

- (a) [90] days or less, prior to the commencement of the Activity, a Cancellation Fee equal to the deposit shall be deducted from any monies paid and retained by the Provider;
- (b) [60] days or less prior to the commencement of the Activity, a Cancellation Fee equal to [50]% of the Cost shall be payable by the Customer and either deducted from any monies paid by the Customer or be a debt due by the Customer to the Provider;
- (c) [30] days or less prior to the commencement of the Activity (including on the day of the Activity and no shows), all monies paid by the Customer will be forfeited.

- 4.3 If the Customer requests an amendment to the Booking [30] days or less prior to the commencement of the Activity, such request will be deemed a cancellation by the Customer and the provisions in clause 4.2(c) will apply.

- 4.4 Where the Booking is cancelled in accordance with clauses 4.2(c), or 4.3, the Provider shall have the right to re-book the Activity, or any part thereof.

5 Costs

- 5.1 Costs are in AUD and inclusive of GST.

- 5.2 Costs are subject to change. The Provider reserves the right to change the Cost without notice provided that the Cost will not be varied for Bookings that have been paid in full, or for which a Deposit has been paid.

6 Changes to Activity

- 6.1 The Customer acknowledges that the nature of the Activity is likely to require considerable flexibility. The itinerary / program provided for each Activity is representative of the types of activities contemplated. The Customer acknowledges that routes, schedules, itineraries, amenities, activities and mode of transport and other inclusions may be subject to

alteration without prior notice due to local circumstances or events. As such the Provider reserves the right to:

- (a) cancel or modify any routes or any other aspect of the Activity;
- (b) substitute different or equivalent routes or aspects of the Activity;
or
- (c) postpone, cancel or delay (either in relation to the departure or arrival times or the duration of the itinerary) any such aspect of the Activity if in the absolute discretion of the Provider it is necessary to do so.

6.2 In the event of any change, modification, cancellation, postponement or delay to the Activity as contemplated under this clause, the Customer acknowledges that the Customer will have no right of refund and no right to claim compensation for any loss and or cost incurred by reason of the change, modification, cancellation, postponement or delay.

7 Property in Goods

7.1 All Goods supplied by the Provider remain the property of the Provider.

7.2 The Customer shall not alter, change, replace or otherwise interfere with any Goods.

7.3 The Provider takes no responsibility for the suitability of the Goods for the Customer's specific requirements, and it is the Customer's responsibility to ensure that all Goods are suitable for the Customer's specific needs.

7.4 Any damage to Goods is the Customer's liability. The Customer will be responsible for any repairs required to damaged Goods.

7.5 The Customer shall ensure that any Goods are not damaged or destroyed and shall return all Goods in the same condition as provided, fair wear and tear excluded.

7.6 The Provider has the right to inspect any Goods at any time.

8 Behaviour Policy

8.1 Anti-social behaviour and intoxication during the Activity and or creating a disturbance to other customers and or Representatives will not be tolerated and may result in immediate termination of the Activity for the Customer.

8.2 Where the Activity is terminated pursuant to this clause, the Customer shall forfeit any and all monies paid to the Provider.

9 Customer's Warranties

9.1 The Customer warrants that:

- (a) the Customer has and will comply with all applicable laws;
- (b) the Customer has and will comply with all lawful directions of the Provider;

- (c) the Customer has not relied on any representations or warranties that may have been made by the Provider or its Representatives;
- (d) the Customer acknowledges that the Activity may involve a significant amount of personal risk. The Customer hereby assumes all such risk and does hereby release the Provider from all claims and causes of action arising from any damages or injuries or death resulting from such risks; and
- (e) the Customer will report any and all hazards immediately to the Provider.

10 Termination

- 10.1 The Provider may terminate the Booking immediately if there has been a breach of the T&C.
- 10.2 Any termination of the Booking in accordance with this provision will result in all monies paid by the Customer to the Provider being forfeited by the Customer and retained by the Provider.
- 10.3 The accrued rights, obligations and remedies of the Provider are not affected by the termination of the T&C.

11 Liability and Waiver

- 11.1 The Customer acknowledges that the Activity may be inherently dangerous and may constitute “dangerous recreational activities” within the meaning of the *Civil Liability Act 2002 (WA)*..
- 11.2 To the maximum extent permitted by law, the Customer releases, waives, discharges and indemnifies the Provider and their Representatives from any and all Claims and Liabilities which may be made by the Customer, or on the Customer’s behalf, for loss, in any way arising out of or related to the Activity or the T&C, including but not limited to property loss or damage, bodily injury or death.
- 11.3 The Provider and their Representatives shall not in any event be liable for contingent, consequential, indirect, special, and punitive or any other similar damages, howsoever caused, for any damage, injury or loss, arising out of or in connection with the Activity or the T&C, whether arising under breach of contract, negligence (commission, omission or advice), statute or otherwise.
- 11.4 The Customer has had the opportunity to consider the risks associated with participating in the Activity and freely and voluntarily accepts:
 - (a) all of the risks (foreseeable and unforeseeable) that may result from the Customer participating in the Activity;
 - (b) any and all consequences which may result from those risks (whether foreseeable or unforeseeable); and
 - (c) that all Implied Warranties are excluded to the fullest extent permitted by law.

11.5 To the maximum extent permitted by law, the total liability of the Provider and their Representatives arising out of, or in connection with, the Activity or the T&C is limited to the total value of the Cost.

11.6 This clause:

- (d) applies notwithstanding that any such claim, action or loss may come about, either wholly or in part, due to the negligence of or breach of a contractual term by the Provider;
- (e) is intended to be as broad and inclusive as is permitted by law; and
- (f) does not exclude, restrict or modify the application of the *Competition and Consumer Act 2010* (Cth), as amended from time to time.

11.7 For the purposes of this clause:

"Claim" means any claim, allegation, debt, cause of action, liability, proceeding, suit or demand of any nature and whether present or future, actual or contingent, fixed or unascertained and arising at law, in equity, under statute or otherwise.

"Implied Warranties" means all warranties of any nature in relation to the Activities (as the case may be) which are implied by law (whether pursuant to the *Competition and Consumer Act 2010* (Cth) or otherwise).

"Liabilities" mean any and all liabilities, debts or obligations, whether actual or contingent, present or future, quantified or unquantified or incurred jointly or severally with any other person.

12 GST

12.1 Unless otherwise stated, all amounts payable by the Customer are inclusive of GST.

12.2 The Customer agrees to pay GST in respect of any goods or services that the Provider supplies to the Customer and or are supplied to the Customer on behalf of the Provider.

13 Insurance

The Customer must obtain comprehensive travel insurance on Kimberley itineraries including (but not limited to) cover for trip cancellation, valuables and force majeure events. Non-residents should also ensure they have cover for medical expenses and evacuation in Australia.

14 Force Majeure Event

14.1 If any Force Majeure Event results in the Provider being prevented from, or delayed in, performing any of its obligations to the Customer:

- (a) then such a delay or prevention of performance shall not be deemed to be a breach of contract or these T&C's;
- (b) no loss or damage shall be claimed by the Customer from the Provider by reason thereof; and
- (c) The Provider shall use its best endeavours to minimise and reduce any period of restriction or interference occasioned by the Force Majeure Event.

14.2 In the event of a Force Majeure Event, the Provider, in its absolute discretion may:

- (a) substitute a different or equivalent Activity in place of cancelled or modified Activity;
- (b) postpone, cancel or delay (either in relation to the departure or arrival dates) any aspect of the Activity if in the absolute discretion of the Provider it is necessary to do so;
- (c) offer a transfer of the Activity, or part thereof, to an alternative date within 24 months (or such longer period as is reasonable and determined by the Provider in the circumstances), which transfer option is subject to availability;
- (d) offer a credit, to the value of any monies paid, which credit will be valid for travel within 24 months from the issue date (or such other longer period as determined by the Provider in its absolute discretion), provided that:
 - (i) any additional costs payable on the new booking will be payable by the Customer in full;
 - (ii) additional costs may apply for the Activity in future seasons;
 - (iii) credit terms and conditions are final;
 - (iv) credits are not able to be extended beyond their expiry date; and
 - (v) the credit, or any balance on a partially used credit, is not redeemable for cash.

15 Personal Information

15.1 The Customer's personal information may be used by the Provider and may be disclosed to the Provider's Representatives, agents, service providers, suppliers or other third parties for any purpose associated with the Booking. Any use or disclosure of the Customer's personal information by the Provider will be in accordance with the *Privacy Act 1988* (Cth).

15.2 The Customer acknowledges that photos or video of the Customer may be taken by the Provider or its Representatives. These images may be used in any promotional materials, website, all social media platforms (i.e. Instagram), etc., unless the Customer specifically requests in writing to the Provider to not use the Customer's image. Otherwise, the Provider is granted a perpetual, royalty-free, worldwide, irrevocable licence by the Customer to use such images for publicity and promotional purposes.

16 Severance

If any part of the T&C is wholly or partly invalid, unenforceable, illegal, void or voidable, the T&C must be construed as if that provision or part of a provision had been severed from the T&C and the parties remain bound by all of the provisions and part provisions remaining after severance.

17 Governing laws

17.1 The T&C are governed by and shall be construed in accordance with the laws of the State of Western Australia.

17.2 The parties irrevocably:

- (a) submit to the exclusive jurisdiction of the Courts of Western Australia and the Courts competent to determine appeals from those Courts:
 - (i) for determination of any dispute claim or demand; or
 - (ii) with respect to any proceedings which may be brought at any time relating to these T&C,
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum.

18 Dispute Resolution

18.1 Should any dispute arise between On The Verandah and a Guest, the parties agree that formal proceedings in a Court or Tribunal will not commence until after the following process has been followed:

- (a) A party provides written notice specifying the nature of the dispute ("the notice").
- (b) The parties will in good faith attempt to resolve the dispute.
- (c) If the dispute is not resolved within 7 days of receipt of the notice, the parties agree to refer the dispute to mediation administered by the West Australian Dispute Resolution Service and conducted in accordance with the ADC Guidelines for Commercial Mediation.
- (d) If there is no resolution to the dispute at the expiration of 30 days from the receipt of the notice, formal proceedings may be commenced.