

## Supply of Services – Terms and Conditions

### 1. Definitions

The following definitions apply to these Terms and Conditions:

- (a) **“Agreement”** means this Agreement and any variation in writing after the date of the agreement.
- (b) **“Booking”** means the reservation made by the Customer for the Service.
- (c) **“Business Day”** means a day which is not a Saturday, Sunday, public holiday or bank holiday in the applicable State in Australia.
- (d) **“Company”** means “Mystic Ocean Pty Ltd (ACN 614 132 688) as Trustee for The Calvert Family Trust (ABN 305 873 589) trading as Bush to Ocean Road Tours (ABN 19 305 873 589)”.
- (e) **“Confidential Information”** means information or documents provided to, received by or produced by a Party in respect of the Services but excluding information that is generally available to the public or is known to a Party before the date of this Agreement.
- (f) **“Customer”** means the Party engaging the Company to provide the Services.
- (g) **“Departure Date”** means the date the Service is due to depart.
- (h) **“Departure Location”** means the location that the Service is due to depart, as determined by the Company from time to time.
- (i) **“Deposit”** means 10% of the Fees for the Services.
- (j) **“Fees”** means the amount payable to the Company for providing the Services.
- (k) **“Intellectual Property”** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields including without limitation, those rights as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation in July 1968.
- (l) **“Loss”** means any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory body or other authority.
- (m) **“Parties”** means any party to this Agreement.
- (n) **“Payment”** means the total amount of Fees paid by the Customer to the Company for the Services
- (o) **“Services”** means the provisions of tour and sightseeing services as determined by the Company from time to time.
- (p) **“Terms”** means the Terms and Conditions of this Agreement.
- (q) **“Third Party”** means any other party who is not a party to this Agreement.

### 2. Interpretation

Interpretations in this Agreement, unless the context requires otherwise:

- (a) The singular includes the plural and vice versa.

- (b) If something is to be done on a day which is not a Business Day then that thing must be done on the next or following Business Day.
- (c) The words “in writing” include any communication sent by letter, facsimile transmission or email.
- (d) These Terms and Conditions are applicable to any provision of Services to the Customer by the Company except where otherwise expressly provided.
- (e) Nothing in these Terms and Conditions is to be read or implied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.
- (f) The Customer acknowledges that this Agreement consists of these Terms and Conditions, the Privacy Policy and any annexures or documentation expressly incorporated as part of the Agreement.
- (g) The Customer agrees that they have read and understood the provision of this Agreement before provision of the Services.
- (h) All monetary references are references to Australian dollars.

### 3. Information provided by Customer

- (a) The Customer is responsible for providing accurate, timely and complete information in connection with the Customer’s Booking.
- (b) The Company is not responsible for any claims relating to any inaccurate, untimely or incomplete information provided by the Customer.
- (c) The Company acknowledges the information provided by the Customer may be deemed to be Confidential Information.
- (d) The Company will use its best endeavours to ensure the privacy of all Customer Confidential Information in accordance with this Clause 3, Clause 14 and Clause 15.
- (e) The Customer agrees to hold harmless the Company for any liability or damages resulting from the release of Confidential Information to Third Parties.

### 4. Bookings

- (a) Bookings are offers to purchase the Service under these Terms of this Agreement.
- (b) The Company reserves the right to reject or accept any Booking made by a Customer at the Company’s sole discretion, for any reason or for no reason.
- (c) Reasons provide for non-acceptance of a Booking include but are not limited to the following:
  - (i) an error in the price or description;
  - (ii) weather;
  - (iii) minimum numbers not being met;
  - (iv) maximum numbers being met; or
  - (v) an error in the Booking.
- (d) Bookings may only be made by persons over the age of eighteen (18) years of age at the date the Booking is made.

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- (e) Subject to clause 12, the transfer of a Booking from the Customer to any proposed transferee is at the discretion of the Company.
- (f) A Customer may change the Departure Date of their Booking, subject to the availability of the Services on the date the Booking is to be transferred to.
- (g) The Customer acknowledges and agrees that the Services to be provided by the Company may change from time to time due to road closures and other road or traffic conditions.

### 5. Deposit

- (a) A Deposit is payable upon Booking by the Customer.
- (b) The Deposit is a non-refundable payment.

### 6. Payment

- (a) Any Customer Fees owing to the Company are due in full seven (7) days before the Departure Date, or at the time that the Customer makes the Booking, whichever is later.
- (b) The Company accepts payment of the Fees via online/internet banking or such other payment method as directed by the Company from time to time.

### 7. Fee

- (a) Fees quoted by the Company for the Service are expressed in Australian currency and include government charges.
- (b) Fees may be subject to change from time to time, with such changes to be at the discretion of the Company.
- (c) The Company will endeavour to make known to Customers any Fee changes within a reasonable period of time of the change occurring.

### 8. GST

The Company's Fees are exclusive of GST, unless otherwise stated. Any applicable GST will be added to the Fee in the Booking and will be paid by the Customer.

### 9. Cancellation by the Customer

- (a) If the Booking is cancelled by the Customer more than eight (8) days prior to the Departure Date, the Company will be entitled to keep the Deposit and any other Payment made by the Customer will be fully refunded by the Company.
- (b) If the Booking is cancelled by the Customer between seven (7) days and twenty-four (24) hours of the Departure Date, the Company will be entitled to keep twenty-five percent (25%) of the Payment due for the Services and any other Payment in excess of this amount will be fully refunded by Company.
- (c) If the Booking is cancelled by the Customer less than twenty-four (24) hours before the time of departure on the Departure Date, the Company will be entitled to keep one hundred percent (100%) of the Payment made by the Customer.

- (d) It is in the sole discretion of the Company if a refund is given outside of the scope of this Clause 8.
- (e) The Company will not be liable for cancellation by the Customer due to illness, injury, damages, loss, delay or any other factors beyond the Company's control that results in the Customer missing the time on the Departure Date or the Departure Location.
- (f) The Company recommends each Customer takes out an appropriate insurance policy which covers cancellation.

### 10. Cancellation by the Company

- (a) The Company reserves the right to cancel, change, transfer or substitute any Services at any time for any reason by providing reasonable Notice to the Customer.
- (b) If a Service is cancelled by the Company the Customer will be entitled to:
  - (i) a refund of 100% of their Payment; or
  - (ii) an alternative Service as offered by the Company to substitute the cancelled Service; or
  - (iii) a credit note for a future Service.

### 11. Refund

- (a) In some instances bank fees and exchange rates may mean the amount refunded is different to the amount originally paid for the Service.
- (b) The Company warrants it has no control over bank fees and exchange rates and is unable to accept responsibility for such discrepancies in refunded amounts.

### 12. Gift Vouchers

- (a) Gift vouchers cannot be refunded and are non-transferrable from the Customer to any proposed transferee, however the Customer may change any Departure Date selected under the Gift Voucher, subject to date availability.
- (b) Gift vouchers are valid for a period of twelve (12) months from the date of purchase.

### 13. Photos and Marketing

- (a) The Customer consent to the Company using images of the Customer that may be taken during the Service for advertising and promotional purposes in any medium the Company may choose.
- (b) The Customer grants the Company a perpetual, royalty-free, worldwide, irrevocable licence to use such images for publicity and promotional purposes.

### 14. Confidentiality

- (a) The Parties, and any employees, agents or sub-contractors of the Parties, must not disclose Confidential Information belonging to the other party without the other's prior written consent unless the disclosure is to:
  - (i) a Third Party in relation to the provision of the Services;
  - (ii) the insurers or legal advisors of the Parties;

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- (iii) required by law or a regulatory authority.
- (b) This clause shall survive termination of the Agreement.

### 15. Privacy

- (a) The Customer acknowledges that the Company is required and permitted to collect Personal information from the Customer in order to provide the Services.
- (b) The Company will comply with the legal requirements of the *Privacy Act 1988* (Cth), including Australian Privacy Principles and its Privacy Policy.

### 16. Exclusion of Implied Terms

The Customer may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied in the Agreement or in connection with the Services by the Company under law or statute or custom or international convention are excluded.

### 17. Limitation of Liability

- (a) To the maximum extent permitted by law, the Company's total liability arising out of or in connection with its performance of its obligations pursuant to these Terms, the Agreement, or arising out of or in connection with the Services (including pursuant to or for breach of these Terms, Agreement or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:
  - (i) the Company shall have no liability to the Customer for any Consequential Loss;
  - (ii) the Company's total aggregate liability for Loss, however arising, shall not exceed the Payment paid by the Customer to the Company for the Services that gave rise to the Loss in question. The limitations and exclusions in this sub-clause 17(ii) do not apply to the extent that any Loss is directly attributable to:
    - a. the personal injury or death caused by the Company's default, breach of these Terms or the Agreement or negligence; or
    - b. fraud by the Company.
- (b) Each party must take reasonable steps to mitigate any Loss it suffers or incurs.

### 18. Indemnity

The Customer agrees to indemnify and hold the Company, its agents, contractors and employees harmless from and against any, actions, claims, demands, losses, damages, proceedings, compensation, costs, charges and expenses (including solicitor fees) incurred by or made against them (including by a third party) due to or arising out of:

- (a) a breach of this Agreement or Terms by the Customer;
- (b) any negligent act or omission or wilful misconduct of the Customer;

- (c) Incorrect or incomplete information provided by the Customer; and/or
- (d) A change to any relevant requirements of government authorities or other statutory body that may take place after the Services have been provided.

### 19. Governing Law and Jurisdiction

This Agreement is governed by the law in force in the State of Victoria and the parties submit to that jurisdiction.

### 20. Severability

If any part of this Agreement is found to be void, unlawful or unenforceable then that part of the Agreement will be deemed to be severable from the other parts of this Agreement and the severed part will not affect the validity and enforceability of any remaining provisions.

### 21. Termination

- (a) The Company may terminate the Agreement immediately by written notice to the Customer if the Customer breaches any material obligations in these Terms and does not remedy the breach within fourteen (14) Business Days of being notified in writing of the breach, or prior to the Departure Date, whichever is the earlier.
- (b) From the date of termination of the Agreement, the Customer shall be required to make all payments which are due under the Agreement prior to the date of termination.
- (c) Termination under this clause will be without prejudice to any other rights or remedies to which either party may be entitled.