

Noosa

DESTINATION MANAGEMENT COMPANY

Standard Terms and Conditions of Trade

OPERATIVE PART

1. Interpretation

This agreement is governed by the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that state.

In the interpretation of this agreement:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;
- (c) Grammatical forms of defined words or phrases have corresponding meanings;
- (d) Parties must perform their obligations on the dates and times fixed by reference to the capital city of Queensland;
- (e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (f) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- (g) References to a party are intended to bind their executors, administrators and permitted transferees; and
- (h) Obligations under this agreement affecting more than one party bind them jointly and each of them severally.

2 Operative provisions

2.1 The parties agree that the costs of all services provided by the company to “the Purchaser/s”:

- 2.1.1 Are priced in Australian dollars;
- 2.1.2 Shall remain unchanged except in circumstances which give rise to an increase in costs which are beyond the reasonable control of the company; and
- 2.1.3 - Unless otherwise expressly stated - are costs per person; and
- 2.1.4 Require “the Purchaser/s” to pay a deposit of 50% of the total costs immediately upon booking, with the balance payable not less than 14 days prior to the commencement date of the tour; and
- 2.1.5 Our costs are payable by electronic funds transfer unless otherwise agreed.

2.2 The Company and “the Purchaser/s” agree that should:

- 2.2.1 “the Purchaser/s” cancels his/her/its booking at any time the Company shall retain the deposit;
- 2.2.2 The Company’s supplier fail to provide the service or services agreed between the parties and the Company cannot secure the services of an alternate supplier at least 3 business days from the commencement date of the tour, the Company must refund the deposit to “the Purchaser/s” less any amount expended by the Company preparatory to the provision of the service or services.

2.3 To the extent possible at law the Company shall not be liable to “the Purchaser/s” for any of the following:

- 2.3.1 Hazards – reasonably foreseeable or otherwise – resulting in loss to “the Purchaser/s” and which arise out of “the Purchaser/s” travel to, from and in the country or countries of the tour including hazards to do with travel by boat, aircraft or by any other reasonable means;
- 2.3.2 Forces of nature which result in some form of loss to “the Purchaser/s”;
- 2.3.3 Political unrest, military action which result in some form of loss to “the Purchaser/s”;
- 2.3.4 Accident or illness to which “the Purchaser/s” is subject provided the Company has taken all reasonable steps to prevent such accident or illness and has, where necessary, taken the further step or steps to mitigate the adverse effects of the accident or illness.
- 2.3.5 Loss or further expenses incurred by “the Purchaser/s” as a consequence of delays, changes to travel times outside the reasonable control of the Company
- 2.3.6 Costs associated with the alteration of the travel itinerary by the Company provided such alteration or alterations are reasonable in the circumstances;
- 2.3.7 Loss to “the Purchaser/s” as a consequence of the cancellation of the tour by the Company on reasonable grounds prior to the commencement of the tour;

- 2.3.8 Loss or damage to luggage before, during or at the conclusion of the tour.
- 2.4 The parties agree that the price of the tour package comprises the prepaid services referred to in the official itinerary, a copy of which is Schedule 'A' to this agreement, together with the costs and charges of the Company for the services it provides in preparing and facilitating the tour the subject of the itinerary.
- 2.5 The parties further agree that the price of the tour package is subject to change without notice for which "the Purchaser/s" is liable at all times on the basis that such changes in price are attributable to changes in tariff, exchange rates and the like.
- 2.6 Notwithstanding anything to the contrary in this Agreement as between "the Purchaser/s" and the Company remains at all times liable for any and all costs attributable to the cancellation fees raised by the provider of the travel service, which may or may not appear in the official itinerary.
- 2.7 In the event "the Purchaser/s" does not appear at the time of departure and has not provided at least 48 hours' notice of his/her intention not to participate in the tour "the Purchaser/s" forfeits the whole of the payment made by "the Purchaser/s" in payment of the tour price.
- 2.8 "the Purchaser/s" is not entitled to a refund for any unused prepaid services included in the tour package or as a consequence of any changes made to the itinerary while en route, including, without exception, changes in hotel accommodation, excursions and transportation services. All charges included for services provided by the Company are not subject to refund.
- 2.9 To the extent possible at law "the Purchaser/s" releases the Company from any and all liability and responsibility, foreseeable or otherwise, present or future, for any and all loss, injury to person, damage to property, or accident, or which may be the result of any delay or change of itinerary, or irregularity connected with the tour package which is beyond the control of the Company, including but not limited to, acts of God, transportation problems, fire, machinery or equipment malfunction or failure, government actions, war, civil disturbance, labour disputes, riots, thefts, sickness, or weather, and which includes all expenses or damages, direct or consequential, claimed or sustained by group organizers, tour participants, or travellers, who waive their individual rights and waive all claims against the Company based on any claim of negligence by any of the suppliers of services included in the tour package. This release is binding on and enforceable against group organizers, tour participants, travellers, their representatives, heirs and assign.

2.10 Except where otherwise provided the Company reserves its right to cancel a tour prior to the commencement of the tour in which case it agrees to refund all monies to “the Purchaser/s”.

3. Confidentiality

The parties must keep the terms of this agreement confidential, save for any necessary disclosure to their respective legal and financial advisers.

4. Entire agreement

This agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this agreement, and supersedes any prior understanding, arrangement, representation or agreements between the parties as to the subject matter contained in this agreement.

5. Amendment

An amendment or variation to this agreement is not effective unless it is in writing and signed by all the parties.

6. Dispute resolution

If a dispute arises between the parties, the complainant must not commence any court or arbitration proceedings, except where that party seeks urgent interlocutory relief, unless it has first complied with this clause:

(a) Notification

The complainant must inform the respondent in writing of the following:

- i. The nature of the dispute;
- ii. The outcome the complainant desires, and
- iii. The action the complainant believes will settle the dispute.

b. Endeavour to resolve dispute

On receipt of the complaint by the respondent, both parties will make every effort to resolve the dispute by mutual negotiation within 14 business days.

c. Mediation

Any unresolved dispute or difference whatsoever arising out of or in connection with this contract shall be submitted to mediation under the Mediation Rules of the Resolution Institute.

d. Survival of this clause

This clause survives termination of this agreement.

7. Waiver and amendments

Any waiver by any party to a breach of this agreement shall not be deemed to be a waiver of a subsequent breach of the same or of a different kind.

8. Events beyond control

Neither party shall be liable to the other party for any loss caused by any failure to observe the terms and conditions of this agreement, where such failure is occasioned by causes beyond its reasonable control including but not limited to by fire, flood, riot, strike, war, restrictions and prohibitions or any other actions by any government or semi government authorities.

9. Force majeure

If any part of this agreement is to any extent invalid, illegal or unenforceable in a court of law, the remaining terms of this agreement will not be affected and will remain in full force.

10. Severance

If anything in this agreement is unenforceable, illegal or void, it is severed and the rest of the agreement remains in force.

11. Notices

A notice or other communication to a party must be in writing and delivered to that party or that party's practitioner in one of the following ways:

- (a) Delivered personally; or
- (b) Posted to their address when it will be treated as having been received on the second business day after posting; or
- (c) Faxed to their facsimile number when it will be treated as received when it is transmitted; or
- (d) Sent by email to their email address, when it will be treated as received when it enters the recipient's information system.

12. Counterparts

This agreement may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the agreement will be the date on which it is executed by the last party.

13. Costs

Each party will pay their own costs in relation to this agreement.

