

## Luxury River Trails Pty Ltd ACN 610 452 787

### Terms and Conditions of Trade

#### 1. Definitions and interpretation

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##### 1.1 Definitions

The following definitions apply in the Recitals and these Terms and Conditions unless the context requires otherwise:

**Agreement** means the agreement constituted by these Terms and Conditions, the Tour Information, the Payment Statement as well as the terms and conditions of any third-party supplier of the Services arranged by Murray River Trails.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Booking** means a reservation made by the Customer for the supply of any Service in accordance with these Terms and Conditions

**Customer** means the person who enters into these Term and Conditions as the Customer as well as any other persons who will benefit from the Services and on whose behalf the Customer has entered into these Terms and Conditions. Each person who is a Customer under these Terms and Conditions is bound jointly and severally by these Terms and Conditions.

**Deposit** means any portion of the Price which is an instalment on the full Price as advised to the Customer by Murray River Trails

**Exclusions** means

- (a) those Services specifically excluded in the Payment Statement or Tour Information;
- (b) travel arrangements outside the timeframe for commencement and conclusion of the Services, including and not limited to domestic and international flights and transfers to and from the departure point;
- (c) accommodation outside the scheduled timeframe for the Services.
- (d) material items or consumables that may be used by the Customer during the Services unless otherwise advised by Murray River Trails.
- (e) customer's insurance including travel insurance

**GST** means goods and services tax under A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Inclusions** means the Services specifically included in Payment Statement or Tour Information but excludes the Exclusions.

**Loss** means, in relation to any person, any personal, physical, economic loss, including loss of enjoyment, or damage incurred or suffered by the person and includes a cost, fee, tax, surcharge, liability, claim or judgement against the person howsoever arising and whether present, future, fixed or unascertained, actual or contingent.

**Murray River Trails** means Luxury River Trails Pty Ltd ACN 610 452 787 as trustee for The Tony Sharley Family Trust trading as Murray River Trails (ABN 30 044 588 224) which may include a division of the company which may be trading under other business names.

**Medical Treatment** means, in relation to a person, a treatment, drug, aid or other device used by the person in connection with a physical or mental condition of the person, whether or not such condition has been diagnosed by a qualified medical practitioner.

**Payment Statement** means any receipt or invoice issued by Murray River Trails to the Customer in connection with these Terms and Conditions, whether issued electronically or manually.

**Price** means the total price for the Services stated in the Payment Statement or Tour Information after the application of any discount, variation or supplement expressly given in the Payment Statement or Tour Information.

**Services** means any tourism service supplied by Murray River Trails to the Customer, including (but not limited to):

- (a) Murray River Walk;
- (b) Murray River Safari
- (c) Murray River Escapes;
- (d) Any service supplied by Murray River Trails to the Customer specified on the Payment Statement; and
- (e) Any other tourism service supplied by Murray River Trails to the Customer

**Special Requirements** means, in relation to a person, any special dietary requirements or medical requirements of that person whether or not such requirements are due to the choice of the person, or to a physical or mental condition of the person, and whether or not such condition has been diagnosed by a qualified medical practitioner.

**Tour Information** means information relating to the specific Services or other travel arrangements offered and may include but is not limited to information on itinerary, location, catering, accommodation, guides, recommended fitness levels for Customers, Inclusions, Exclusions and Price.

## 2. Time and Effect of Agreement

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### 2.1 Formation of Agreement

The Agreement comes into existence upon:

- (a) Murray River Trails making the Tour Information known to the Customer; and
- (b) The Customer making a Booking with Murray River Trails; and
- (c) Either
  - (i) Murray River Trails issuing the Payment Statement for payment of the Deposit; and
  - (ii) Murray River Trails receiving payment of the Deposit not less than 7 days after issuing this Payment Statement;or
  - (iii) Murray River Trails issuing a Payment Statement for payment of the Price in full in lieu of payment of the Deposit; and
  - (iv) Murray River Trails receiving payment of the Price in full upon issue of the Payment Statement or within 7 days of issuing this Payment Statement

### 2.2 Acknowledgement by Customer

The Customer acknowledges that the initial payment of any Payment Statement issued by Murray River Trails constitutes acceptance by the Customer of the Tour Information, these Terms and Conditions, and the Agreement.

### 2.3 Company may vary

- (a) Murray River Trails may vary the Tour Information or any term of these Terms and Conditions or cancel these Terms and Conditions until payment of the Price is made in full by the Customer to Murray River Trails.
- (b) Should Murray River Trails cancel the Agreement under clause 2.3(a) the Customer is entitled to a full refund of any part of the Price already paid to Murray River Trails, except if cancelled subject to clause 7.5(b)

### 2.4 Commencement and Completion of Services

The Services will commence and complete at the time and date specified on the Tour Information or the Payment Statement or as otherwise advised to the Customer by Murray River Trails.

## 3. Price and Payment

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### 3.1 GST and other taxes

- (a) All prices are inclusive of GST, unless otherwise stated in the Payment Statement.
- (b) All prices are exclusive of airport tax, or accommodation tax or any other surcharges or levies which are ordinarily imposed in connection with tourism services unless otherwise stated in the Payment Statement.

### 3.2 Currency and Advertising

- (a) All prices are in Australian dollars unless otherwise stated in the Payment Statement. A change in the exchange rate of the Australia dollar or any other currency does not affect the Price.
- (b) All prices for Services are subject to change and may not be current across all mediums where prices are advertised.

### 3.3 Supplements, Variations and Discounts

- (a) Pricing is on a twin-share basis on two-adults sharing one room unless the Customer is otherwise advised by Murray River Trails.
- (b) Solo Customers - A supplement of the price for the Services may be applied to Customers who wish to secure their own room on the basis that it is not a twin-share in respect to the Services.
- (c) Group Bookings - the price for the Services may be varied for groups of Customers who wish to secure multiple twin-share rooms on a group booking basis in respect to the Services.
- (d) The amount of any supplement or variation applied to the price for the Services is non-negotiable and is applied purely within the discretion of Murray River Trails and forms part of the full Price for the Services if applied.
- (e) The amount of any supplement or variation applied to the price for the Services will be expressly stated in the Payment Statement or Tour Information or as otherwise advised to the Customer before the Payment Statement is issued.

- (f) Any discount offered on the Services is purely within the discretion of Murray River Trails and Murray River Trails is not obliged to offer such a discount unless it is stated expressly in the Payment Statement.

**3.4 Method of Payment**

- (a) If a Deposit is paid Murray River Trails will issue a Payment Statement with the balance of the Price within 90 days of commencement of the Services.
- (b) If a Deposit is not paid Murray River Trails will issue a Payment Statement with the full Price of the Services.
- (c) The Payment Statement specifies the method of payment of the Price of the Services. No Credit card surcharge applies.
- (d) A Payment Statement may be issued electronically or manually.
- (e) Payment of the full Price of the Services must be received by the date of the commencement of the Services or the Services will not be provided to the Customer and Murray River Trails will treat the failure to pay as Cancellation by the Customer.

**3.5 Inclusions and Exclusions**

- (a) The Price includes the Inclusions
- (b) The Price excludes the Exclusions

**4. Warranties**

**4.1 Customer Warranties**

The Customer warrants that:

- (a) it has read and understood these terms and conditions.
- (b) it is responsible for any Loss due to it being unable to fulfil an arrangement between it and a third party because of cancellation or variation of the Services by Murray River Trails.
- (c) it understands that the Services are provided without any warranty whatsoever except to the extent mandated by law.
- (d) it understands that it should obtain insurance appropriate for any reasonably foreseeable risks associated with the use of the Services, including but not limited to travel insurance intended to cover events of force majeure and rescheduling.
- (e) it understands and acknowledges that use of the Services may involve activities that involve an element of danger and these Terms and Conditions constitute fair warning of any such danger, and that Murray River Trails recommends it takes out comprehensive insurance with respect to such activities.
- (f) it understands that the standards which it is used to in its own country of residence may not apply in a country in which the Services are provided.
- (g) it has explained the nature of any Special Requirements it may have to Murray River Trails.
- (h) it is solely responsible for checking whether or not the Customer will be permitted or able to use any Medical Treatment whilst using the Services.
- (i) it is solely responsible for confirming travel times and luggage allowances or rules for any part of the Services involving travel.
- (j) it is solely responsible for obtaining any visa, passport or other permit necessary for utilisation of the Services.
- (k) it will not engage in any socially undesirable, illegal, harmful, abusive or unsafe conduct whilst using the Services.
- (l) It will take all due care when handling any personal property whilst using the Services and will not wilfully damage any property, vehicle, person, artifact, land, item or thing while using the Services.
- (m) In the case of Murray River Walk and Murray River Safari, it has not purchased these services on behalf of a child under the age of 12 unless Murray River Trails approved an exemption prior to purchase

**4.2 Independence of Customer Warranties**

Each of the warranties in 4.1(a) to 4.1(m) is a separate and independent warranty and representation and its meaning is not affected by any other warranty.

**4.3 Company Warranties**

- (a) Although Murray River Trails endeavours to supply services provided by operators of good repute and standing, Murray River Trails cannot and does not warrant the fitness or quality of the Services for the Customer's intended purpose.
- (b) To the maximum extent permitted by law, Murray River Trails provides no warranty whatsoever for the Services.

- (c) To the maximum extent permitted by law, Murray River Trails provides no warranty whatsoever in connection with the delay or cancellation of the Services by reason of Force Majeure or otherwise.
- (d) To the maximum extent permitted by law, Murray River Trails provides no warranty whatsoever in relation to the quality of any offers for services provided by third-parties which are advertised by Murray River Trails in any medium, including online.
- (e) The prices of any services provided by third-parties which are advertised by Murray River Trails in any medium are subject to the terms and conditions of that third party and may be subject to change and to the maximum extent permitted by law Murray River Trails provides no warranty in relation to the accuracy of any price advertised.
- (f) Murray River Trails employs usual endeavours to maintain current pricing of Services advertised by Murray River Trails in any medium.

## **5. Cancellation and Variation**

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### **5.1 Cancellation by Customer**

- (a) Cancellation by the Customer incurs a forfeiture of the full Price if made less than 21 Days before commencement of the Services.
- (b) Cancellation by a Customer incurs a forfeiture of 55% of the full Price if made within 89 to 21 days before commencement of the Services.
- (c) Cancellation by a Customer incurs a forfeiture of the amount of any Deposit paid if made within 120 days to 90 days before commencement of the Services.
- (d) Cancellation by a Customer does not incur any forfeiture of any Price paid if made more than 120 days before commencement of the Services and the Customer is entitled to a full refund of any part of the Price paid to Murray River Trails,
- (e) Cancellation by the Customer incurs a forfeiture of the full Price if the Customer opts out of the Services or breaches any of the Customer Warranties at any time after the commencement of the Services.
- (f) In the case of Murray River Walk and Murray River Safari, prior to the commencement of the Services, if Murray River Trails becomes aware that a Customer purchased these services on behalf of a child under the age of 12 then the Services may be cancelled and the Customer incurs forfeiture of any Price paid, unless a prior exemption has been approved by Murray River Trails.
- (g) If a Customer elects to not use any part of the Service provided by a third-part supplier or Murray River Trails, the Customer forfeits any part of the Price paid in respect to that part of the Service and will not be reimbursed for that part of the Price paid.
- (h) The Customer and Murray River Trails acknowledge that the fees set out in any third party supplier terms and conditions are a reasonable estimate of the loss likely to be suffered by Murray River Trails should the Customer cancel.
- (i) Murray River Trails may treat failure to pay the full Price 90 days prior to commencement of the Services as Cancellation by the Customer.
- (j) Murray River Trails must treat any written notice provided by the Customer as Cancellation by Customer provided it:
  - (i) Clearly states that the Customer wishes to cancel; and
  - (ii) Is emailed to [bookings@murrayrivertrails.com.au](mailto:bookings@murrayrivertrails.com.au) and received by Murray River Trails prior to the commencement of the Services; or
  - (iii) Is mailed to Murray River Trails, PO Box 257 Paringa SA 5340 and received by Murray River Trails prior to the commencement of the Services;

### **5.2 Cancellation by Company**

- (a) Murray River Trails reserves the right to terminate these Terms and Conditions at any time prior to the supply of the Services.
- (b) If Murray River Trails terminates these Terms and Conditions under clause 5.2(a) the Customer is entitled to a full refund of any part of the Price paid to Murray River Trails, except if 7.5(b) applies.
- (c) Murray River Trails, in its discretion, may offer the Customer alternative services to the Services of lesser or greater value than the Services in place of a refund under 5.2(b), acceptance of which alternative services by the Customer constitute a waiver of the Customer's entitlement to a refund under 5.2(b).
- (d) Murray River Trails, in its discretion, may offer the Customer a credit voucher to be put toward future use of the Services to the value of the part of the Price paid to Murray River Trails in place of a refund under 5.2(b), acceptance of the credit voucher by the Customer constitute a waiver of the Customer's entitlement to a refund under 5.2(b)

- (e) Murray River Trails reserves the right to terminate these Terms and Conditions after the supply of the Services if the Customer engages in any socially undesirable or illegal conduct during the supply of the Services.

### 5.3 Variation by the Customer

If the Customer requests a variation of the Services, Murray River Trails may in its sole discretion agree to such variation which variation is conditional upon:

- (a) Murray River Trails issuing a new Payment Statement (**New Payment Statement**) for the varied services;
- (b) The Customer paying any additional price within seven days of issue of the New Payment Statement;
- (c) The Customer signing the New Payment Statement within seven days of its issue; and
- (d) The Customer paying a fee for the variation, which fee:
  - (i) is solely in Murray River Trails's discretion but is at least \$150.00; and
  - (ii) the Customer acknowledges is a genuine estimate of the costs incurred by Murray River Trails for varying the Services.

Murray River Trails will endeavour to cater for any reasonable variation of the Services which a Customer may request. In some cases, it may not be possible for Murray River Trails to satisfy every request which a Customer may make to vary the Services. If Murray River Trails is unable to make a variation which is requested less than 90 days before the commencement of the Services then Murray River Trails may treat the request as a cancellation under clause 5.1.

## 6. Liability of Company

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### 6.1 Exclusion of Liability

To the maximum extent permitted by law, the Customer releases Murray River Trails from all liability, and Murray River Trails is excluded from all liability for any Loss suffered by the Customer caused by:

- (a) Murray River Trails cancelling or varying the Services;
- (b) termination of these Terms and Conditions under clause 5.2(e);
- (c) failure of the Services to provide for any Special Requirements of the Customer of which the Customer did not notify Murray River Trails and which are not expressly included in the Payment Statement or Tour Information;
- (d) the Customer being prevented from using a Medical Treatment whilst using the Services;
- (e) the Customer being prevented from bringing luggage, or requiring carriage of luggage, in excess of or beyond the allowances or rules of the provider of any part of the Services involving travel;
- (f) the Customer changing, rescheduling, cancelling or varying any travel arrangements which would not have been made if the Customer had not used, or intended to use, the Services;
- (g) the Customer being unable to fulfil an arrangement between the Customer and a third party because of cancellation or variation of the Services by Murray River Trails;
- (h) the Customer failing to make full use of the Services or any part of the Services;
- (i) a third party supplier of any part of the Services;
- (j) a reasonably foreseeable event for which the Customer could have obtained insurance;
- (k) any inherent or obvious risk associated with the use of the Services;
- (l) any dangerous activity associated with the use of the Services whether or not the Customer has been warned specifically with respect to such activity and whether or not the Customer has insurance with respect to such activity;
- (m) any Loss suffered by the Customer caused by occurrence of any of the events in 7.5(a)(i) –(ix)
- (n) an unforeseeable event or occurrence caused by a third party which would not have occurred had the Customer not used the Services; or
- (o) any damage to a motor vehicle in connection with the use of the Services.

### 6.2 Independence of Exclusions

Each of the releases and exclusions of liability 6.1(a) to 6.1(o) is an independent and separate representation and release of Murray River Trails from liability by the Customer and exclusion of liability by Murray River Trails, the meaning of which is unaffected by any other.

### 6.3 Liability

Notwithstanding clause 6.1, Murray River Trails acknowledges liability for any Loss suffered by the Customer caused by an intentional or negligent act or omission of Murray River Trails or its employees or agents in connection with these Terms and Conditions.

## 7. General

### 7.1 Entire Agreement

- (a) This agreement for the supply of the Services is constituted by these terms and conditions, the Tour Information, the Payment Statement as well as the terms and conditions of any third party supplier of the Services arranged by Murray River Trails.
- (b) If there is any inconsistency between these terms and conditions and any third party supplier terms and conditions as referred to in clause 7.1(a), these terms and conditions prevail for the purposes of construing the Agreement between Murray River Trails and the Customer.
- (c) The Customer acknowledges that it has not relied upon any representation made by Murray River Trails or a third party in deciding to enter in these Terms and Conditions, excepting any representation expressly made in a document referred to in clause 7.1(a).

### 7.2 Jurisdiction

- (a) This Agreement is governed by the laws of South Australia and the Commonwealth of Australia.
- (b) The parties agree that the courts of South Australia and any courts authorised to hear appeals from such courts, have exclusive jurisdiction to decide any dispute with respect to these Terms and Conditions.

### 7.3 Severance

If a clause or subclause is void, illegal or unenforceable, it may be severed without affecting the other provisions in these Terms and Conditions.

### 7.4 Consumer Law

If any provision of these Terms and Conditions is inconsistent with the Australian Consumer Law that provision is to be read down so that it is consistent with the Australian Consumer Law.

### 7.5 Force Majeure

- (a) Murray River Trails is not liable for, and to the maximum extent permitted by Law the Customer releases Murray River Trails from all liability for, any delay or failure to perform an obligation under this Agreement caused by:
  - (i) war, riot, insurrection, vandalism or sabotage;
  - (ii) strike, lockout, ban, limitation of work or other industrial disturbance;
  - (iii) fire, storm, earthquake or other natural disaster;
  - (iv) power surge or failure or breakdown of plant, machinery or equipment;
  - (v) shortage of labour, transportation, fuel, power, plant, machinery, equipment or materials; or
  - (vi) law, rule or regulation of any government or governmental agency and executive or administrative order or act of general or particular application,
  - (vii) epidemic, pandemic, or other threat to public health and safety;
  - (viii) act of God, meaning any event outside of human control;
  - (ix) any other event which results in rendering the performance of an obligation under this Agreement performance,that is not foreseeable, or not caused by Murray River Trails
- (b) Murray River Trails reserves the right to cancel or delay or vary any Services as a result of the occurrence of any of the events in 7.5(a)(i) –(ix) and will provide the Customer with notice of the cancellation or delay or variance as soon as reasonably possible
- (c) If, due to any of the events in 7.5(a)(i) –(ix),
  - (i) commencement of Services is cancelled or delayed; or
  - (ii) supply and completion of Services is made impossible, and
  - (iii) there is not a Cancellation by the Customer; then:
    - (iv) the Customer is not entitled to a refund for any of the Price paid to Murray River Trails before the occurrence of the event; and
    - (v) the Customer and Murray River Trails will endeavour to work together to negotiate an arrangement whereby the Customer can receive the benefit of future or alternative services to the value of any Price paid to Murray River Trails before the occurrence of the event; and
    - (vi) If the Customer and Murray River Trails have not come to an agreed negotiated arrangement under clause 7.5(c)(v) within 28 days of the event then Murray River Trails will offer the Customer a credit voucher to be put toward future use of the

Services to the value of the part of the Price paid to Murray River Trails before the occurrence of the event.

- (d) If this clause 7.5 applies, the parties acknowledge that to the extent of any inconsistency between this clause 7.5 and any other provision of this Agreement then this clause 7.5 prevails.

**7.6 No Waiver**

- (a) No right under this Agreement is waived or deemed to be waived, except by written notice signed by the party waiving the right, or its authorised officer.
- (b) A party does not waive its rights under this Agreement by granting an extension or forbearance to another party.

**7.7 No Assignment**

The Services are personal to the Customer and cannot be assigned to any third party.

**7.8 Contra Proferentem**

This document is not to be interpreted against the interests of Murray River Trails merely because Murray River Trails proposed this document or some provision of it or because Murray River Trails relies on a provision of this document to protect itself.

**7.9 Privacy**

The Customer understands that Murray River Trails will keep any personal details of the Customer private in accordance with the Privacy Policy of Murray River Trails which is available at the website of Murray River Trails or otherwise provided to the Customer. Any personal information that Murray River Trails obtains from the Customer, or about the Customer from its representative, may be used for the purposes of marketing and running the Services and other related purposes. Murray River Trails will not disclose your personal information to a third party except to suppliers of your travel arrangements, or in the case of Customers making a Booking for Murray River Walks, to Great Walks of Australia ACN 160 266 857 for advertising and promotional related purposes. The Customer may notify Murray River Trails to request their personal details not be shared.

**7.10 Notices**

All notices from the Customer to Murray River Trails must be in writing and may be delivered by hand, post, email or facsimile. A notice will be treated as delivered on: the day of receipt if delivered by hand, either on receipt or if not received within 48 hours, 48 hours after posting if posted, when the email is sent if by email, when the facsimile machine confirms the transmission if by facsimile.