

# TROPICAL JOURNEYS CHARTERS TERMS & CONDITIONS

## 1. Scope of Terms

- a) The following Terms and Conditions govern the services provided by Calypso Reef Charters Pty Ltd and Experience Daintree Pty Ltd or either or both of them, severally or jointly as may be applicable from time to time ("**Tropical Journeys**", referred to in this Agreement in the singular or plural, *mutatis mutandis*) to you ("the Customer").
- b) These Terms and Conditions shall prevail over any other Terms and Conditions including those implied by statute to the extent permissible by law. Where there are additional Terms and Conditions reduced to writing between the parties, all written terms shall apply, save to the extent where there is inconsistency between these terms and any other written agreement, in which case, this Agreement will apply.
- c) 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.
- d) The Customer agrees and acknowledges that any and all representations and warranties made in respect of the subject matter of this Agreement are deemed to be subsumed in this document, with the purpose that this document forms an entire agreement as to its subject matter.
- e) Any terms imposed by statute capable of being negated in contract are negated by the Agreement of the parties on acceptance of these Terms and Conditions, including but not limited to any applicable provisions of the *Competition and Consumer Act 2010*.
- f) Where Tropical Journeys are not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this Agreement, ('Non-Excludable Provision'), and Tropical Journeys are able to limit the Customer's remedy for a breach of the Non-Excludable Provision, then Tropical Journeys' liability for breach of the Non-Excludable Provision is limited to, at Tropical Journeys sole and absolute discretion or election, a full refund for the services provided by Tropical Journeys
- g) To the extent that these Terms and Conditions are subject to any statute relating to unfair contract terms, the parties agree and acknowledge that:
  - (i) The parties had an opportunity to review these Terms and Conditions prior to their acceptance
  - (ii) The terms included herein are fair and balanced between the parties, properly protecting the legitimate commercial interests of both parties.
- h) Subject to Tropical Journeys obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Tropical Journeys' maximum aggregate liability for all claims under or relating to this Agreement or its subject matter, whether in contract, tort (including, without limitation, in negligence), in equity, under statute or under an indemnity, is limited to an amount equal to the fees paid by the Customer under this Agreement.

## 2. Payment and Cancellation

- a) By entering into a contract with Tropical Journeys, the Customer reserves a place on a tour, provided by Tropical Journeys, selected by the Customer of those tours provided.
- b) For charter bookings, a 25% deposit is required to confirm the booking, with the balance of payment due 14 days prior to travel (confirmed numbers and passenger list are also required). Payments can be made by electronic transfer or by credit card (Visa or MasterCard).
- c) All amounts payable under this Agreement are exclusive of GST. If GST is imposed on any supply made under this Agreement, the recipient of the taxable supply must pay to the supplier (in addition to the consideration otherwise payable for that supply under this Agreement and at the same time as that consideration is payable) an amount equal to the GST payable on the taxable supply.

- d) In the event that the Customer gives notice to Tropical Journeys at any time prior to the date which is 7 days prior to the reserved date that they or any Passenger are unable to attend a reserved tour, Tropical Journeys will issue a full refund for the amount paid in respect of that Customer or Passenger.
- e) In the event that the Customer gives notice less than 7 days prior to the tour reserved by this Agreement, the full fee will be charged, in consideration of the reserved place on the tour which Tropical Journeys might otherwise have sold.
- f) Tropical Journeys may cancel a booking at any time. The Customer agrees and acknowledges that booked tours can be affected by inclement weather, safety concerns, transit availability, force majeure and other factors beyond Tropical Journeys' control. In the event that Tropical Journeys cancels a booking, tour or event, Tropical Journeys must issue a full refund to the Customer. This refund shall be the sole and absolute liability of Tropical Journeys to the Customer in respect of any cancellation, and the Customer releases and forever holds Tropical Journeys harmless in respect of any loss, liability, cost, damage or expense arising out of that cancellation.
- g) All tours are subject to minimum number requirements and are subject to cancellation by Tropical Journeys if minimum numbers are not met.
- h) Notwithstanding any other provision of these Terms and Conditions, any prepayment of the Great Barrier Reef Marine Park Authority's Environmental Management Charge for any Customer or Passenger will be refunded in any circumstance of non-attendance by that Customer or Passenger.

### **3. Carriage Conditions**

- a) When booking through Tropical Journeys, a Customer may nominate any number of Passengers for whom they are booking a tour, on the basis of booking a ticket for each of them.
- b) By attending any tour or event, or part thereof, the Customer and any Passenger is deemed to have agreed to these terms and conditions, and it is a condition of carriage or participation that they are fully bound to the conditions hereunto.
- c) The Customer warrants that they have provided copies of these terms and conditions to each Passenger that they may have nominated, and indemnify and shall keep and hold Tropical Journeys indemnified in respect of any loss or damage sustained on the basis of a failure to provide these terms and conditions to a Passenger and obtain their agreement to be bound by those terms before attending a tour or event.
- d) Tropical Journeys may at any time refuse a Customer or Passenger entry, access or participation to any tour or event, or any part thereof, including use of or admission to any vehicle, if, in Tropical Journeys' sole discretion it is determined:
  - (i) A Customer or their Passenger is intoxicated, abusive or threatening any of the employees or Passengers;
  - (ii) A Customer or their Passenger ignores or disregards any lawful and reasonable direction of Tropical Journeys or any tour operator, driver, crew or other person responsible for providing a Tour;
  - (iii) A Customer or their Passenger breaches these Terms and Conditions of service; or
  - (iv) A Customer or their Passenger represents a risk to the health and safety of themselves or any other Passenger.
- e) Any representations made about tours and availability are subject to change. Tropical Journeys reserve the right to alter schedules, prices and substitute one vehicle/vessel for another if considered necessary and without notice.
- f) The Customer and any Passengers shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the tour.

### **4. Liability and Indemnity**

- a) The Customer hereby releases and holds forever harmless Tropical Journeys and/or its owners, employees, servants and agents and operators in respect of any and all liability for:

- (i) any injury to, or death of, any person, including the Customer and any Passengers;
- (ii) loss of or damage to luggage, equipment or any other personal property; and/or
- (iii) consequential loss or disruption to travel plans or scheduling;

whether during embarking, carriage, in-water activities, external tour activities, disembarking or otherwise arising out of or in connection with the services provided by Tropical Journeys, save and except for any loss or damage directly caused by the negligent act or omission of Tropical Journeys.

- b) The Customer agrees to indemnify and keep and hold Tropical Journeys indemnified against all costs, loss, damage or expense (including solicitor and own client costs, commercial agent commissions, insurance, loss of profit and interest) incurred by Tropical Journeys as a result of the Customer's breach of these Terms and Conditions, or any claim brought or proceedings instituted by the Customer or their Passengers in relation to matters subject to these releases.

## **5. Health, Safety and Participation**

- a) In addition to the limitations of Clause 3(b)(iv) of these Terms and Conditions, Tropical Journeys explicitly reserves the right to refuse the carriage of infants/small children and wheelchair bound Passengers, on certain tours as may be nominated from time-to-time.
- b) Tours provided by Tropical Journeys can pose a legitimate risk to health and safety of infant children or wheelchair bound Passengers, and it is not practicable to make adjustments to the natural environment, or otherwise provide safety on certain group tours.
- c) Customers agree and acknowledge that this is subject to the unjustifiable hardship exemption pursuant to section 29A of the *Disability Discrimination Act 1992*, a necessary discharge of Tropical Journeys' obligations pursuant to the *Work Health and Safety Act 2011*, and represents a protection of workplace health and safety for the purposes of section 108 of the *Anti-Discrimination Act 1991* and direct compliance with state legislation pursuant to section 39(6) of the *Age Discrimination Act 2004*.
- d) In some circumstances, private charters may be able to be arranged for wheelchair bound or infant Passengers. Please call reservations for further information (07) 4099 6999.

## **6. Privacy**

- a) Tropical Journeys will comply with the National Privacy Principles in dealings with the Customer under this Agreement. Tropical Journeys' means of complying with the privacy principles are included in its privacy policy, available at [www.tropicaljourneys.com/privacy-policy.html](http://www.tropicaljourneys.com/privacy-policy.html) <<http://www.tropicaljourneys.com/privacy-policy.html>>.

## **7. General**

- a) This Agreement shall be subject to the laws of the state of Queensland, and the parties submit to the non-exclusive jurisdiction of the courts of the state of Queensland.
- b) The failure by Tropical Journeys to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect Tropical Journeys' right to subsequently enforce that provision.
- c) To avoid any doubt, acceptance of these Terms and Conditions will form the Agreement, an enforceable contract, including by way of electronic communication, or acceptance of the Terms and Conditions via an online Interface or app.