

## 1. DEFINITIONS

In this agreement, the following terms have the following corresponding meaning:

**Agent** means the agent through which the Tickets were booked.

**Charter** means the cruise for which the Charterer is paying and the Operator is providing.

**Charterer** means the client who is paying for the Tickets.

**Charterer's Group** means all the passengers who will take part in the Charter.

**Master** means the duly qualified person in charge of the Vessel.

**Operator** means the owner or operator of the Vessel as specified in the Booking Confirmation.

**Vessel** means the Operator's vessel or vessels specified in the Booking Confirmation.

**Partner vessels** all vessels other than Silver Spirit or Free Spirit

## 2. LEGALLY BINDING CONTRACT

The following terms & conditions apply to any services provided by The Agent: Spirit Fleet (ABN 45 607 013 525 Whale Swim Safaris Pty LTD)

### 2.1 Acceptance

- (1) By accepting the quotation and paying for the tickets, the Charterer agrees to be bound by these Terms and Conditions.
- (2) The Charterer acknowledges that they have read and understood these Terms and Conditions and has or will convey these conditions to all of the Charterer's Group.

## 3. CONFIRMATION OF BOOKING / DEPOSIT / PAYMENT

### 3.1 Quotations

Quote prices are valid for 7 days only, ticket prices are subject to change.

### 3.2 Confirmation of Booking

Tickets will be confirmed on receipt of full payment for all tickets.

### 3.3 Methods of payment

EFT or credit card; Visa, MasterCard or Amex.

### 3.4 Additional charges

Any additional charges on the day of service are to be immediately charged to the credit card provided by the charterer. This includes but is not limited to additional guests, additional services, pay-on consumption beverages, waiting time for embarking and disembarking at wharves, water taxis and any other additional charges notified by the Operator.

### 3.5 Right of refusal

- (1) The Agent reserves the right to refuse bookings which contravene these Terms and Conditions.
- (2) The Charterer must provide all necessary details to the Agent about the Charter and the Charterer's group.
- (3) The Charterer must not mislead the Agent in any way. By providing false or misleading information regarding the nature of the Charter and/or the Charterer's group, the Agent and/or Operator reserve the right to refuse boarding of any or all passengers with no refund offered.

## 4. CANCELLATIONS

All cancellations must be made in writing and emailed to [info@spiritfleet.com](mailto:info@spiritfleet.com)

### 4.1 Cancellations

- (1) Cancellations within 90 days of The Charter date incur a 100% fee and no refund will be offered;
- (2) Cancellations 91 days or more tickets will be refunded only if The Agent can secure a replacement for the exact amount of tickets sold. If tickets on purchased for a Partner Vessel this option may not be available.
- (3) All refunds will be minus a 5% processing fee. If tickets were purchased on an international card, any international processing/transaction fees incurred will be deducted from the amount to be refunded.

## **5. FOOD AND ALCOHOL**

### **5.1 Responsible service of alcohol**

- (1) The Operator is bound by the NSW Liquor Act and must abide by the guidelines for the Responsible Service of Alcohol;
- (2) Intoxicated guests will not be permitted to board;
- (3) The Operator must refuse service of alcohol to both intoxicated persons and guests under the age of 18;
- (4) The Operator may refuse service of alcohol to any individual, this is the Operator's and/or the Operators employees absolute discretion at any time;
- (5) If the Charter or any of the Charterers group are showing signs of intoxication, including but not limited to; slurring words, rude and/or aggressive and/or inappropriate behaviour, vomiting or loss of coronation, will result in the immediate ejection of any and all passengers at the nearest permissible wharf area with no refund offered;
- (6) The Vessel has the right not to serve shots or doubles under any circumstances. Mixed drinks will be served with a standard 30ml spirit measurement;
- (7) Where alcohol is supplied by the vessel, drinks service will cease 15 minutes prior to the end of the Charter;
- (8) Guests are not permitted to carry liquor from the Vessel on disembarkation;
- (9) Indecent behaviour on a Charter Vessel is prohibited under the NSW Liquor Act and your Charter will be terminated in the event of unacceptable behaviour as determined by the crew, and if such circumstances occur there will be no refunds;
- (10) If the Charter or any of the Charterers group are seen consuming or be showing signs to be under the influence of illegal substances the charter will result in the immediate ejection of any and all passengers at the nearest permissible wharf area with no refund and the relevant authorities notified.

### **5.2 Food**

- (1) The Agent must be advised of any dietary requirements at least 14 days prior to the scheduled date of the Charter. The Agent will endeavour to accommodate any dietary requirements but makes no guarantee that all requests made will be accommodated for;
- (2) Whenever alcohol is served on a Vessel, a substantial quantity of food must also be provided to satisfy the RSA obligations.

## **6. GENERAL CONDUCT AND SAFETY**

### **6.1 Charter Course**

The Charterer acknowledges that the Master has the sole discretion at all times to take whatever action is necessary to protect and maintain the safety, welfare and good order of the vessel, its passengers and crew with regard to the weather conditions and other activity on the Harbour.

### **6.2 Embarkation and Disembarkation**

- (1) The Charter time includes boarding and disembarking. The Charter will not be extended if the Charterer or the Charterers group are late.
- (2) The Vessel will dock at the times stated on the booking confirmation.

### **6.3 Responsibility of the Charterer**

The Charterer is at all times responsible for the conduct of the Charterer's group.

### **6.4 Damage to the Vessel**

The Charterer shall be liable for any loss or damage to the Vessel or its equipment or fittings howsoever caused by the Charterer's Group. Fair wear and tear excepted.

### **6.5 Swimming**

- (1) Swimming is not permitted.

### **6.6 Weather Conditions**

- (1) All Charters will proceed regardless of weather conditions unless deemed unsafe by the Master on the day.
- (2) The Master and the Agent reserve the right to make a determination on the day that the charter is to be rescheduled due to adverse weather conditions. This right solely rests with the Master and the Agent. The Charterer is not entitled to reschedule the Charter at any time due to current or forecasted weather conditions.
- (3) If The Charter is to be cancelled tickets will be funded, minus a 5% processing fee. If tickets were purchased on an international card, any international processing/transaction fees incurred will be deducted from the amount to be refunded.

### **6.7 Substitute Vessel**

In the event of a mechanical problem to the booked vessel, the Agent reserves the right to provide another vessel of similar style and capacity in order for the Charter to be completed.

### **6.8 Responsibility of the Charterer**

The Charterer is at all times responsible for the conduct of the Charterer's group.

### **6.9 Damage to the Vessel**

The Charterer shall be liable for any loss or damage to the Vessel or its equipment or fittings howsoever caused by the Charterer's Group. Fair wear and tear excepted.

## **7. LIMITATION OF LIABILITY AND RISK WARNING**

### **7.1 Limit of Liability**

It is a condition of the Charter that the liability of the Operator, its servants, agents, employees and subcontractors is agreed to be limited in accordance with the *Limitation of Liabilities and Maritime Claims Act 1989 (Cth)* and that any claim for loss or damage must be notified in writing within 7 days from the day of the Charter and any court action, suit or proceeding must be brought within 1 year of that date.

### **7.2 Indemnity**

The Charterer agrees to indemnify and hold harmless the Operator, the Agent, their agents and employees, from and against any and all losses, claims, actions, costs, expenses, fees, damages, fines and liabilities (including reasonable legal fees) caused by any negligent act or omission by the Charterer or members of the Charterer's Group including:

- (a) Failure to follow any reasonable direction given by the Master or crew;
- (b) Failure to comply with any of these terms or conditions;
- (c) Failure to comply with any warning sign;
- (d) Unreasonable or unsafe behaviour;
- (e) Wilful misuse of the equipment or facilities of the vessel;
- (f) Intoxication or the use of prohibited drugs.

### **7.3 Risk warning**

There are inherent risks and dangers on board any vessel. All passengers participate in the Charter entirely at their own risk.

### **7.4 Jurisdiction**

The laws of New South Wales govern this agreement and the parties agree to submit to the jurisdiction of the Courts of New South Wales in respect of any disputes arising between them.

## **8. GOVERNMENT ORDERS, COVID-19 AND EVENTS OUTSIDE OF OUR CONTROL**

### **8.1 Your compliance**

- (1) Charters are classified under the hospitality and recreational sector. The Agent, The Operator and The Charterer agree to comply with all government orders relevant to the hospitality and recreational sector and/or charters in general. This includes any orders and requirements of the Australian government relating to COVID-19.
- (2) The Agent and/or Operator reserve the right to refuse any of The Charterer's group to board any Vessel if they have not complied with any relevant and applicable government orders, with no refunds offered.

### **8.2 Government orders**

- (1) The Agent is only accepting bookings for tours and Charters that are within the vessel's COVID capacity and in accordance with the relevant government guidelines and travel restrictions. This capacity can change based on government orders. The Charter will be held to the capacity that was in place at the time The Charter was booked.
- (2) Based on current guidelines at the time The Charter is confirmed, The Charter can proceed on the selected vessel, and operators and vessels work within COVID safe guidelines.
- (3) The Agent and/or Operator reserve the right to refuse entry of anyone on the vessel if it will cause non-compliance with any Government order or the law. No refunds will be offered.
- (4) Closure of state/national borders will not be deemed a reason for a reschedule/cancellation if The Charter can operate under NSW government orders.

### **8.3 Cancellations**

- (1) If the Australian government enforces stricter conditions, and accordingly, The Charter cannot proceed as per the original booking confirmation and the event is cancelled, all tickets will be refunded minus a 5% processing fee. If tickets were purchased on an international card, any international processing/transaction fees incurred will be deducted from the amount to be refunded.
- (2) If The Charter can proceed but with reduced boat capacity numbers, any tickets purchased over the limit of the restriction will be refunded in order of the most recent purchased first, until the updated capacity limit is reached. Tickets will be refunded minus a 5% processing fee. If tickets were purchased on an international card, any international processing/transaction fees incurred will be deducted from the amount to be refunded.
- (3) If The Charter can proceed as per the original booking confirmation all other reasons to cancel by The Charterer will fall under a cancellation, refer to point 4 for conditions.

**9. MEDIA RELEASE AND WAIVER**

**9.1 Consent**

- (1) The Charterer and each member of the Charterer's Group hereby consent the Agent, the Operator and/or the Master to take, or have taken by others, including the Vessel Silver Spirit's Photo Booth, your photographs, digital images, audio, video footage and/or any other recording (Images); and publish the Images in any form, in whole or in part, and distribute them in any medium including, but not limited to, print media, the internet, the Agent's social media accounts, other multi-media uses, advertisements or graphic representation in connection with the Agent's business.
- (2) To the extent that the images contain another person who is:(a) under the age of 18, you consent to the use of their Images in accordance with this form and warrant that you are the parent or guardian of that child; and/or over the age of 18, you confirm and warrant that they have consented to the use of their Images in accordance with this form.
- (3) If you do not wish for any pictures of you to be taken, please inform our staff prior to your cruise that you do not consent and we will make the appropriate arrangements.

**9.2 Waiver and acknowledgements**

The Charterer acknowledges and agrees that the Images, including the photo booth images, are the absolute property, and remain in the ownership, of The Agent. You confirm that neither you nor any other person in the Images will be paid for giving this permission and you hereby waive any claim that you may have for any remuneration, residuals, royalties or any other payment in respect of use of the Images. The Charterer or any member of the Charterer's Group cannot make any claim (of any nature) against, and hereby discharge, the Agent and/or the Operator and their employees in connection with the use of the Images in accordance with this condition.

**9.3 Communications**

You must not distribute, communicate or disseminate any material or information or message on any medium or platform (whether online or offline) which may damage, defame or otherwise negatively affect the reputation of the Agent. You acknowledge that a breach of the above covenant may result in loss and damage to the Agent and the Agent reserves the right to terminate the booking and/or seek damages against you. This condition continues to apply at all times, including after the charter.

I, ..... agree to these Terms and Conditions.

Signed;

Date;