

## Background

- A. These Booking Terms and Conditions (**Terms**) govern all bookings made with Delwood Tours Pty Ltd ACN 694 204 950 (**Delwood Tours, we, us, our**), including those made through a Travel Agent or other third party intermediaries.
- B. By making a booking you confirm that you have read, understood, and agree to be bound by these Terms in their entirety.
- C. If you make a booking on behalf of another person or a group, you represent and warrant that you have full authority to bind each such person and that each such person has received, read, understood and agreed to these Terms, and that you and each such person shall be jointly and severally liable under these Terms.
- D. These Terms should be read together with our Privacy Policy, which is available on our website and forms part of the agreement between us.

## Operative clauses

### 1. Definitions

In these Terms, the following terms have the following meanings unless the context indicates a contrary intention:

- (a) **Booking Confirmation** means our written confirmation issued to you once your booking has been accepted and your Deposit received.
- (b) **Business Day** means a day on which banks are open for general banking business in Adelaide, South Australia, excluding Saturdays, Sundays, and public holidays.
- (c) **Customer** means any person who participates in a Tour, whether booked directly with us or through a Travel Agent.
- (d) **Deposit** means the non-refundable per-person amount payable at the time of booking as specified in your Booking Confirmation.
- (e) **Force Majeure Event** means has the meaning given in clause 11.1.
- (f) **Government Agency** means any government or governmental, semi-governmental, administrative, fiscal, or judicial body, department, commission, authority, tribunal, agency, or entity whether foreign, federal, state, territorial, or local, including any self-regulatory organisation established under statute.
- (g) **GST** means goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (h) **Itinerary** means the day-by-day schedule of activities, transport, accommodation, meals, and guided experiences forming part of a

Tour, as published by us at the time of booking and as set out or referenced in your Booking Confirmation. The Itinerary is indicative only and is subject to variation in accordance with these Terms.

- (i) **Local Operator** means any third-party operator, guide, driver, accommodation provider, or other service provider engaged by us in a destination country to deliver any part of a Tour.
- (j) **Loss** means any loss, liability, damage, cost, charge or expense of any kind, whether direct or indirect, present or future, fixed or contingent, and includes, without limitation, any loss of profit, loss of revenue, loss of opportunity, loss of anticipated savings, loss of business, loss of goodwill, reputational damage, and any consequential, special or incidental loss, as well as any liability to a third party, and any legal costs and expenses (including on a full indemnity or solicitor-client basis) and costs of investigation, enforcement and recovery, and includes loss arising from or in connection with property damage, personal injury or death, whether arising in contract, tort (including negligence), under statute or otherwise.
- (k) **Medical Declaration** means the Medical and Fitness Declaration Form referred to in clause 8.5.
- (l) **Our IP** means has the meaning given in clause 17.
- (m) **Privacy Policy** means the privacy policy published on our website, as amended from time to time.
- (n) **Tour** means the travel itinerary, accommodation, transport, guiding, and associated services arranged by us and described in your Booking Confirmation.
- (o) **Travel Agent** means a licensed travel agency that makes a booking with us on behalf of a Customer.
- (p) **Travel Insurance Policy** means a comprehensive travel insurance policy meeting the minimum requirements set out in clause 8.4.

### 2. Interpretation

#### 2.1 General interpretation

In these Terms, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to these Terms or another document includes any document which varies, supplements, replaces, assigns or novates these Terms or that other document;
- (b) **(headings)** clause headings are inserted for convenience only and do not affect interpretation of these Terms;

- (c) **(party)** a reference to a party includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (d) **(including)** including and includes are not words of limitation and a list of examples is not limited to those items or items of a similar kind;
- (e) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (f) **(singular)** the singular includes the plural and vice versa;
- (g) **(gender)** words importing one gender include all other genders;
- (h) **(rules of construction)** neither these Terms nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (i) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (j) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in South Australia, Australia, even if the obligation is to be performed elsewhere;
- (k) **(writing)** a reference to a notice, consent, request, approval or other communication under these Terms means a written notice, request, consent, approval or communication; and
- (l) **(Australian currency)** a reference to dollars or \$ is to Australian currency unless otherwise stated.

### 3. Contract formation and eligibility

- (a) A binding contract between us is formed when we issue a Booking Confirmation and you pay your Deposit in accordance with these Terms. No contract, obligation, or liability arises before both conditions are satisfied.
- (b) We reserve the right to decline any booking at our absolute discretion, including where we reasonably consider a Tour unsuitable for a Customer, without any obligation to give reasons.
- (c) Customers must be 18 years of age or older at the time of booking. A person under 18 may only participate in a Tour if accompanied throughout by a parent or legal guardian who:
  - (i) is named in the Booking Confirmation;
  - (ii) has agreed to these Terms on the minor's behalf; and

- (iii) accepts full legal responsibility for the minor's safety, conduct, and wellbeing during the Tour.

- (d) You agree and acknowledge that, to the maximum extent permitted by law, we are not bound by any representation, statement, or other information made available on our website or in any promotional or marketing materials. All warranties, representations, and guarantees are limited to those expressly set out in these Terms, except to the extent any warranty, condition, or guarantee is implied by law and cannot be excluded.

- (e) These Terms supersede all prior representations, negotiations, understandings, and agreements, whether oral or written, relating to a Tour.

### 4. Bookings through Travel Agents

- (a) Where a booking is made through a Travel Agent, the Travel Agent acts solely as the Customer's agent and not as our agent or Customer. A binding contract is formed between the Customer and us. We do not accept responsibility for any act, omission, undertaking, or representation of a Travel Agent.
- (b) By submitting a booking, the Travel Agent:
  - (i) represents and warrants that it has actual authority to bind each named Customer to these Terms;
  - (ii) confirms that each Customer has received, read, and agreed to these Terms and our Privacy Policy;
  - (iii) undertakes that it has not made representations to any Customer that are inconsistent with these Terms; and
  - (iv) agrees that it and each Customer is jointly and severally liable under these Terms.
- (c) We are not liable for any Loss, damage, or inconvenience arising from a Travel Agent's failure to comply with these Terms or from any misrepresentation by a Travel Agent.
- (d) Where a booking is made through a Travel Agent, any notice given to or by the Travel Agent in connection with the booking is deemed given to or by the Customer at the same time.
- (e) We reserve the right to require a Travel Agent to provide evidence of its authority to act on a Customer's behalf before issuing a Booking Confirmation.

## 5. Prices and payments

### 5.1 Prices, Inclusions, Exclusions and GST

- (a) All prices are quoted in Australian Dollars (AUD). Prices are current at the time of publication but are subject to change without notice prior to a Booking Confirmation being issued.
- (b) Unless otherwise expressly stated, all prices are exclusive of GST where applicable. If a GST adjustment is required after a Booking Confirmation has been issued due to a change in law, we will notify you and the adjusted amount will be passed on.
- (c) The Tour price includes accommodation, ground transportation, local guides and drivers, and other inclusions specified in the published Itinerary. Unless expressly stated, the following are excluded:
  - (i) international and domestic airfares;
  - (ii) airport and hotel transfers;
  - (iii) passport, visa, and entry permit costs payable to any Government Agency;
  - (iv) vaccinations and preventative health measures;
  - (v) Travel Insurance Policy premiums;
  - (vi) meals and beverages other than those specified in the Itinerary;
  - (vii) personal expenses including laundry, telephone, gratuities, and alcohol;
  - (viii) single room surcharges where a single room is requested or required; and
  - (ix) emergency evacuation and associated medical costs.

### 5.2 Price variations

- (a) We reserve the right to surcharge the Tour price prior to receipt of full payment in the following circumstances only:
  - (i) adverse currency fluctuations affecting our costs (we will absorb the first 2% of any adverse movement and may only surcharge beyond that threshold);
  - (ii) imposition of new or increased charges, taxes, levies, or entry fees imposed by any Government Agency;
  - (iii) increases in fuel or transport costs imposed by our suppliers outside our control; or
  - (iv) failure to meet minimum passenger numbers in accordance with these Terms.

- (b) If a proposed surcharge would increase the Tour price by more than 10% above the confirmed price in your Booking Confirmation, you may cancel without incurring cancellation fees, provided you notify us in writing within 14 days of receiving our surcharge notice. If you do not notify us within that period, you will be deemed to have accepted the surcharge.

### 5.3 Deposit

- (a) A non-refundable Deposit per person is required within 7 days of us accepting your booking, unless otherwise stated in your Booking Confirmation. The Deposit amount is specified in the Booking Confirmation.
- (b) The Deposit is consideration for services we begin providing immediately upon acceptance of your booking, including without limitation, preparatory work, reservation of places, coordination with Local Operators, and any advice provided. It is non-refundable in all circumstances and is not a security deposit.
- (c) Notwithstanding clause 5.2(b), prior to the final payment due date, a Customer may elect to transfer the Deposit to an alternative departure date for the same Tour, subject to:
  - (i) availability at the time of transfer; and
  - (ii) payment of any applicable price difference; and
  - (iii) a limit of one transfer per booking.
- (d) If the Deposit is not received within 7 days of acceptance, the reservation will be released without notice and we will have no further obligation.

### 5.4 Final payment

- (a) Full payment of the outstanding Tour price must be received by the date specified in your Booking Confirmation, which will be no later than 60 days prior to Tour departure.
- (b) For bookings made within 60 days of departure, full payment is required at the time of booking.
- (c) If full payment is not received by the due date:
  - (i) we will issue one written payment reminder;
  - (ii) if payment is not received within 5 Business Days of that reminder, the booking will be deemed cancelled by you; and

- (iii) cancellation fees under these Terms will apply to all amounts paid.

## 5.5 Interest on late payment

If any amount owing to us is not paid by the due date, we may charge interest on the overdue amount at the rate of 10% per annum, calculated daily from the due date until actual payment. This right is in addition to any other remedies available to us.

## 5.6 Payment methods and surcharges

Accepted payment methods are as specified on our website or as notified at the time of booking. Credit or debit card payments may attract a processing surcharge, which will be disclosed before you confirm payment. We do not retain full card details after a transaction is processed.

## 5.7 Currency of refunds

All refunds will be paid in AUD to the same account or card from which payment was received. We are not responsible for any exchange rate Loss you suffer if you originally paid in, or convert a refund into, a foreign currency. You accept all fluctuations in foreign exchange rates.

## 6. Amendments by you

- (a) You may request an amendment to your booking by notifying us in writing. We reserve the right to refuse any amendment request at our absolute discretion.
- (b) If we do accept an amendment request, each such request is subject to availability and our ability to obtain corresponding amendments from Local Operators and other suppliers. We will use reasonable endeavours to accommodate your request but cannot guarantee any amendment will be possible.
- (c) An administration fee, as determined by us from time to time and notified to you in writing at the time of your request, applies per booking to each amendment we agree to make, in addition to any costs imposed on us by Local Operators, airlines or other suppliers. All such amounts must be paid before the amendment takes effect.
- (d) A request to transfer your booking to a different departure date (other than a single permitted Deposit transfer under clause 5.3) is treated as a cancellation of the original booking, and cancellation fees under these Terms will apply. Any new booking is subject to current pricing.
- (e) Corrections to passenger names to match passport details are not subject to the administration fee in clause 6.2(c), but must be notified as early as possible. Any costs

imposed by third parties for name corrections are your responsibility. We will not be liable for any Loss arising from your failure to provide correct name details at the time of booking.

- (d) Notwithstanding anything to the contrary in these Terms, no amendment to a booking can be made within 30 days of departure. Any changes requested within that period will be treated as a cancellation and rebooking, subject to availability.

## 7. Cancellations by you

### 7.1 How to cancel

You must give written notice of cancellation to us at our nominated contact address. Cancellation takes effect from the date we actually receive your written notice. Verbal notice is not effective.

### 7.2 Cancellation fees

- (a) The following cancellation fees apply to all Tours, calculated on the total Tour price inclusive of Deposit:

| Notice Before Departure   | Fee                |
|---------------------------|--------------------|
| More than 60 days         | Deposit forfeited  |
| 60 to 45 days             | 25% of Tour price  |
| 44 to 31 days             | 50% of Tour price  |
| 30 days or less / no-show | 100% of Tour price |

- (b) You acknowledge and agree that the cancellation fees set out in clause 7.2(a) above:
  - (i) represent a genuine pre-estimate of our Losses arising from cancellation, having regard to costs already incurred and commitments made to Local Operators;
  - (ii) are not a penalty; and
  - (iii) are reasonably necessary to protect our legitimate business interests;
- (c) The acknowledgement in clause 7.2(b) is given having had the opportunity to seek independent legal advice.
- (d) Where we have paid amounts to third parties, including without limitation, Local Operators, attributable to your booking that we cannot recover, we may deduct those amounts from any refund otherwise payable, in addition to the fee percentages above.

- (e) Any refund due after application of cancellation fees will be processed within 30 Business Days of us receiving your written cancellation notice and completing any recovery of third-party amounts.

### 7.3 No refund after commencement

If you withdraw from a Tour after it has commenced, or fail to join the Tour at its departure point, you will not be entitled to any refund for any unused services, regardless of the reason.

## 8. Pre-departure requirements

### 8.1 Passports

- (a) You must hold a valid passport at all times during your Tour. Your passport must be valid for at least 6 months beyond the Tour departure date, or such longer period as required by any Government Agency of any destination country. It is your sole responsibility to check and comply with the passport requirements of every country on your Itinerary.
- (b) We are not responsible for any Loss, cost, or disruption arising from your failure to hold a valid passport meeting all applicable requirements.

### 8.2 Visas and entry permits

- (a) You are solely responsible for obtaining all visas, entry permits, and travel authorisations required by each Government Agency for each destination country. Any information we provide about visa requirements is general in nature, provided in good faith, and does not constitute legal or immigration advice. You must independently verify requirements with the relevant embassy, consulate, or immigration authority.
- (b) We are not responsible for any Loss, denial of entry, costs, or disruption arising from your failure to hold required documentation or to comply with the entry laws of any destination country.

### 8.3 Correct name details

- (a) All names in connection with your booking must be given exactly as they appear in your passport. If incorrect name details require reissuance of tickets or other documentation, all resulting third-party costs and our reasonable administration costs are solely your responsibility.

### 8.4 Travel Insurance

- (a) It is a condition of your booking that you hold a valid, comprehensive Travel Insurance

Policy for the entire duration of your Tour. A booking cannot proceed and no services will be delivered if this condition is not satisfied.

- (b) At a minimum, your Travel Insurance Policy must cover:

- (i) overseas medical expenses and hospitalisation;
- (ii) emergency medical evacuation and repatriation to Australia;
- (iii) Tour cancellation, curtailment, and amendment costs;
- (iv) loss, theft, or damage to luggage and personal effects;
- (v) personal liability including injury to third parties; and
- (vi) the full cost of evacuation from remote or difficult-to-access destinations.

- (c) The choice of insurer is yours. We recommend purchasing your policy immediately upon paying your Deposit, as cancellation fees apply from that date. Your insurer may, in certain circumstances, reimburse you for forfeited amounts. Failure to obtain insurance at that time is at your own risk, and we accept no responsibility or liability for any loss incurred.

- (d) We may request evidence of your Travel Insurance Policy (including a certificate of currency) at any time before or during your Tour. If you fail to provide satisfactory evidence within a reasonable time of our request:

- (i) we will treat your booking as cancelled by you; and
- (ii) cancellation fees under these Terms will apply.

- (e) While we hold professional indemnity and public liability insurance in respect of our operations, you acknowledge and agree that this cover is for our benefit and does not substitute your personal Travel Insurance Policy.

## 8.5 Medical and Fitness Declaration

- (a) Completion of our Medical and Fitness Declaration Form is a condition precedent to our obligation to carry you on a Tour. Flight bookings (where applicable) will not be made until we have received a satisfactory completed form.

- (b) You must complete and return the Medical Declaration within 7 days of making your booking. Failure to do so may result in:
- (i) cancellation of your booking; and
  - (ii) cancellation fees under these Terms applying.
- (c) By completing the Medical Declaration you confirm, warrant, and represent that you:
- (i) can walk continuously for 4 to 5 hours per day at a sustained group pace, including on unpaved, uneven, wet, or slippery surfaces and in direct sunlight or high humidity;
  - (ii) can negotiate multiple flights of stairs, inclines, and archaeological sites with uneven or unstable surfaces without assistance;
  - (iii) can stand for extended periods, including in hot, humid, or high-altitude conditions;
  - (iv) can carry your own luggage (including to and from accommodation where portage is not provided) without assistance;
  - (v) can independently board and disembark various forms of transport, including small boats, coaches, and 4WD vehicles, multiple times per day without assistance;
  - (vi) can independently manage your personal wellbeing and respond appropriately to an emergency without requiring assistance from our staff or Local Operators;
  - (vii) do not have any medical, physical, or cognitive condition (whether diagnosed, undiagnosed, or under investigation) that:
    - (A) would prevent safe participation in any scheduled Tour activity;
    - (B) requires the use of a walking aid; or
    - (C) requires the carrying or administration of specialised medication or medical equipment that may affect other participants or Local Operators; and
  - (viii) understand that dietary requirements may not always be capable of accommodation by Local Operators and that you are solely responsible for managing any food allergy or intolerance.
- (d) If you cannot make any of the above declarations, or if you disclose a relevant medical or mobility condition, you must provide us with a written assessment from a qualified medical practitioner (or specialist in the relevant condition, as we may require) confirming your fitness to travel and to participate in the Tour safely and without requiring individual assistance from our staff.
- (e) We may decline your booking or cancel it if:
- (i) we are not satisfied with the medical assessment; or
  - (ii) in our reasonable opinion the Tour is unsuitable for you having regard to your disclosed condition,
- and if we cancel in these circumstances having acted reasonably, all amounts paid will be refunded.
- (f) If you fail to provide a requested assessment within a reasonable time, this will be treated as a cancellation by you and cancellation fees under these Terms will apply.

## 8.6 Changes to health or fitness after booking

You must notify us immediately if, after the date of your Medical Declaration, your health, fitness, or mobility changes in any way that may affect your ability to participate in the Tour or that would affect any declaration made under clause 8.5. The provisions of clause 8.5 apply, including our right to require a further medical assessment and to cancel the booking. If we cancel in these circumstances, it is treated as a cancellation by you and cancellation fees under these Terms apply. This obligation is ongoing until the Tour commences.

## 8.7 Indemnity for false or incomplete declarations

If you provide false, misleading, or incomplete information in your Medical Declaration or in connection with any pre-departure requirement, and this results in Loss, damage, injury, or death to yourself, any other Customer, or any staff member or Local Operator, you agree to fully indemnify us and our staff, agents, and Local Operators against all resulting liability, Loss, costs, and expenses.

## 9. Health and vaccinations

- (a) You are solely responsible for obtaining all vaccinations and taking all preventative health measures required or recommended for each destination on your Tour.

- (b) Any health or vaccination information we provide is general in nature, provided in good faith, and does not constitute medical advice. You must consult a qualified medical practitioner before departure.
- (c) We are not responsible for any illness, injury, or Loss arising from your failure to obtain appropriate vaccinations or to take appropriate preventative health measures.
- (d) If you develop a communicable illness before or during your Tour that poses a risk to other Customers or our staff, we reserve the right to exclude you from Tour activities until you are no longer contagious. You will not be entitled to any refund for services missed as a result.

## 10. Cancellations and amendments by us

### 10.1 Amendments prior to departure

- (a) We reserve the right to amend a Tour's Itinerary, inclusions, accommodation, or transport prior to departure where reasonably necessary. Most changes will be minor. We will notify you of minor changes but they do not give rise to any right of cancellation or compensation.
- (b) If we make a significant change that materially reduces the overall value of the Tour (as determined by us acting reasonably), we will notify you as soon as practicable and offer you the option to:
  - (i) accept the amended Tour (with a price reduction if appropriate, as determined by us acting reasonably); or
  - (ii) cancel your booking and receive a full refund of all amounts paid to us.
- (c) You must elect within 14 days of receiving our notice. Failure to elect will be deemed acceptance of the amended Tour.
- (d) Substitution of accommodation or transport with alternatives of substantially comparable or higher standard, changes to the order of Itinerary elements, and minor timing changes are not significant changes and do not entitle you to compensation or cancellation.

### 10.2 Amendments during travel

- (a) You acknowledge that Itinerary changes may become necessary during a Tour due to, among other reasons, inclement weather, road or infrastructure conditions, local permit or access restrictions, or vehicle breakdown. We will use reasonable endeavours to provide suitable alternatives. Where we incur additional reasonable costs in making

alternative arrangements for your benefit, we may pass those costs to you, subject to giving you reasonable prior notice where practicable.

### 10.3 Cancellation by us (other than Force Majeure or minimum participation numbers)

- (a) If we cancel your Tour for reasons other than a Force Majeure Event or a failure to meet the minimum participant requirements under these Terms, you may elect, as your sole remedy:
  - (i) a full refund of all amounts paid to us; or
  - (ii) travel arrangements of substantially equivalent value, if available and agreed in writing.
- (b) To the fullest extent permitted by law, we will not be liable for any other Loss, cost, or expense arising from such cancellation, including airfares, travel insurance premiums, visa costs, or accommodation not arranged by us.

## 11. Force Majeure

### 11.1 Definition

**Force Majeure Event** means any event or circumstance beyond our reasonable control that we could not reasonably have prevented, foreseen, or mitigated, including:

- (i) natural disasters such as floods, cyclones, fires, earthquakes, volcanic activity, landslides, tsunamis, and severe or unusual weather events;
- (ii) acts of war, armed conflict, invasion, civil unrest, insurrection, rebellion, riots, terrorism, or credible threats thereof;
- (iii) epidemic, pandemic, or public health emergency declared by a relevant Government Agency;
- (iv) any new or changed law, regulation, order, directive, or government restriction imposed by a Government Agency, including border closures, travel bans, mandatory quarantine requirements, or curfews (**Government Restriction**); and
- (v) strikes, industrial disputes, or infrastructure failures not caused by us or our employees.

### 11.2 Force Majeure prior to departure

- (a) If, in our reasonable opinion, a Force Majeure Event prevents the Tour from proceeding safely or lawfully, or if you notify us no more than 14 days before departure that a Government Restriction directly applicable to

you prevents you from travelling, we may, by written notice to you:

- (i) reschedule the Tour to an alternative departure date, subject to your agreement; or
  - (ii) cancel the Tour.
- (b) Both parties will use reasonable endeavours to mitigate the impact of a Force Majeure Event.
- (c) If we cancel the Tour, neither party will have any claim for Loss or damages against the other arising from that cancellation. We will, at our election:
- (i) issue you with a credit note equal to amounts paid, redeemable within 24 months of issue against any Tour offered by us; or
  - (ii) refund amounts paid to us, less:
    - (A) any third-party costs we have already incurred or are contractually committed to pay that we cannot reasonably recover;
    - (B) a fair and reasonable contribution to our overhead costs attributable to your booking; and
    - (C) reasonable compensation for work performed by us up to and including the date of cancellation.
- (d) Where a credit note is dependent on corresponding credits being issued by our Local Operators or other suppliers, we cannot guarantee a full credit note will be available. In those circumstances, we may substitute a limited cash refund as described above.

### 11.3 Force Majeure during travel

If a Force Majeure Event causes cancellation or curtailment of travel arrangements after your Tour has commenced, we will use reasonable endeavours to recover from Local Operators and suppliers amounts proportionate to the services not delivered and will pass on any amounts so recovered. We will not be liable for any unrecovered amounts or other Loss or expense.

### 11.4 Sole remedy and acknowledgment

- (a) To the fullest extent permitted by law, the rights set out in clauses 11.2 and 11.3 are your sole and exclusive remedies in the event

of cancellation or curtailment due to a Force Majeure Event. We will not be responsible for any other Loss, cost, or expense including airfares, travel insurance premiums, visa costs, or loss of enjoyment. This clause does not exclude liability for death or personal injury caused by our gross negligence.

- (b) You acknowledge that the Force Majeure provisions in this clause are reasonably necessary to protect our legitimate business interests and that we have strongly recommend purchasing a Travel Insurance Policy that covers cancellation, curtailment, and rescheduling risks associated with Force Majeure Events.

## 12. Minimum participant numbers

- (a) All Tours are operated on the basis of a minimum number of passengers. If a Tour fails to reach the required minimum, we reserve the right, in our sole discretion, to cancel or reprice the Tour.
- (b) We will notify you of a cancellation or repricing no later than 45 days prior to the scheduled departure date.
- (c) If the Tour is repriced, you must, within 14 days of receiving our notice, elect to:
  - (i) accept the revised price; or
  - (ii) cancel your booking and receive a full refund of all amounts paid. If you do not elect within 14 days, you will be deemed to have accepted the repriced Tour.
- (d) We will not be liable for any Loss, cost, or expense you incur as a result of a cancellation or repricing under this clause, including costs associated with airfares, accommodation, or visas arranged independently.

## 13. During the Tour

### 13.1 Remote areas and medical facilities

You acknowledge that Tour destinations may be located in remote areas where:

- (a) access to hospitals and specialist medical facilities is limited or unavailable;
- (b) the standard of available medical care may be substantially lower than Australian standards; and
- (c) evacuation to appropriate medical facilities may take many hours or require air transport at significant cost. By booking and travelling, you accept these risks.

### 13.2 First aid and emergency medical consent

- (a) You irrevocably consent to our staff and Local Operators providing you with first aid or other emergency assistance where they reasonably believe it is necessary, on the basis that:
- (i) such persons are not qualified medical professionals and have no training beyond basic first aid;
  - (ii) we make no representation and give no warranty as to the adequacy or standard of any assistance provided; and
  - (iii) to the fullest extent permitted by law, we and our staff and Local Operators will not be liable for any Loss, injury, or death arising from or in connection with first aid or emergency assistance given or omitted.
- (b) If you are incapacitated and unable to make decisions, you irrevocably consent to us making reasonable medical decisions on your behalf and arranging any medical treatment or evacuation we reasonably consider necessary. You agree to reimburse us in full for all reasonable costs incurred, including evacuation, medical fees, and associated accommodation costs and Losses.

### 13.3 Undisclosed medical conditions during the Tour

- (a) If during the Tour we or a Local Operator reasonably identify a medical, physical, or cognitive condition that was not disclosed in your Medical Declaration, and that condition:
- (i) materially affects your ability to safely participate in any scheduled Tour activity;
  - (ii) creates a risk of harm to yourself, other Customers, our staff, or any Local Operator;
  - (iii) requires individual assistance or supervision that we or Local Operators cannot reasonably provide; or
  - (iv) unreasonably disrupts the conduct of the Tour,
- we may, in our absolute discretion, remove you from the Tour with immediate effect. In those circumstances:
- (v) you will not be entitled to any refund for unused services;

- (vi) we may arrange your early return home at your own cost; and
- (vii) clause 15 (Indemnity) will apply.

### 13.4 Conduct

- (a) You must comply with all reasonable directions given by our staff and Local Operators. You must not behave in a manner that:
- (i) threatens or endangers the safety or wellbeing of yourself, other Customers, our staff, or any third party (including without limitation, Local Operators);
  - (ii) is offensive, intimidating, or harassing;
  - (iii) damages property belonging to us, Local Operators, or third parties; or
  - (iv) significantly disrupts the enjoyment of the Tour by other Customers.
- (b) If, in our reasonable opinion, you engage in such conduct, we may require you to leave the Tour immediately. In those circumstances:
- (i) you will not be entitled to any refund for unused services;
  - (ii) you will be responsible for all costs you incur as a result of early departure; and
  - (iii) clause 15 (Indemnity) will apply in respect of any Loss or damage caused by your conduct.

### 13.5 Seatbelts and safety equipment

Where a vehicle, vessel, or aircraft used during the Tour is equipped with seatbelts or other personal safety equipment, you must use that equipment at all times while in motion or as directed by the operator. To the fullest extent permitted by law, our liability for personal injury or death arising from a transport incident will be reduced or excluded to the extent your failure to use available safety equipment contributed to or caused the injury or death.

### 13.6 Unused services

No refund will be given for any included service you do not use, whether by reason of choice, late arrival, early departure, illness, removal, or any other cause, including transport delays or schedule changes for which we are not responsible.

### 13.7 Local laws

You are responsible for complying with all applicable laws, regulations, and customs of each destination country. We are not responsible for any Loss, fine, detention, or inconvenience arising from your non-compliance. You acknowledge that conduct lawful in Australia may be unlawful in a destination country, and vice versa.

### 14. Independent and optional services

- (a) We are not responsible for any optional activities, excursions, services, or transport that are not expressly included in your Booking Confirmation and which you arrange independently.
- (b) Any recommendation made by our staff or a Local Operator regarding independent services is made in good faith and for convenience only. It does not constitute an endorsement and does not make us responsible for the quality, safety, or delivery of those services.
- (c) Where we act as agent for a third-party principal in arranging additional services at your request, your contract for those services is with that principal. Our liability is limited to taking reasonable care in selecting a reputable provider. All other liability rests with the principal.
- (d) You acknowledge that your Travel Insurance Policy may not cover independently arranged activities and that it is your responsibility to ensure adequate coverage for all activities you undertake.

### 15. Indemnity

- (a) You agree to indemnify, defend, and hold harmless Delwood Tours Pty Ltd, its directors, officers, employees, agents, and Local Operators (each an **Indemnified Party**) against all claims, Losses, damages, costs (including legal costs on a full indemnity basis), and expenses suffered or incurred by any Indemnified Party arising from or in connection with:
  - (i) your breach of any provision of these Terms;
  - (ii) any false, misleading, or incomplete statement made by you in connection with your booking or your Medical Declaration;
  - (iii) your negligent, unlawful, or wilful conduct during the Tour, including conduct resulting in injury to other Customers, staff, or Local Operators or damage to property;

- (iv) your failure to comply with the laws, regulations, or entry requirements of any destination country;
- (v) any claim made against an Indemnified Party by a third party arising from your conduct or your breach of these Terms; or
- (vi) any failure by you to hold adequate travel insurance in accordance with these Terms.

- (b) This indemnity is in addition to any other rights or remedies available to us and survives termination or expiry of the contract between us.

### 16. Responsibility and liability

#### 16.1 Local Operators

- (a) Our Tours are delivered on the ground by Local Operators who are independent contractors. Where a Local Operator supplies a service, our obligation is limited to taking reasonable care in selecting competent, reputable, and appropriately licensed Local Operators.
- (b) Local Operators are not our employees or agents. Their services are subject to the laws and standards of the destination country, which may differ materially from Australian standards.
- (c) To the fullest extent permitted by law, we are not responsible for any Loss, injury, death, damage, delay, or inconvenience caused by or attributable to the acts or omissions of any Local Operator. Any claims arising from Local Operator services must be brought against the relevant Local Operator directly.

#### 16.2 Services we directly supply

- (a) To the extent we are the direct and principal supplier of a service, we will deliver that service with reasonable skill and care.
- (b) We are responsible for our employees acting in the course of their employment. We are not responsible for the acts or omissions of Local Operators, independent contractors, or third parties unless they were acting under our direct supervision in connection with tasks we specifically assigned to them.

#### 16.3 Compliance with local law

You acknowledge that travel arrangements or services that comply with the applicable laws, regulations, and standards of the destination country will be deemed to have been properly performed, even if they would not

meet Australian standards. Compliance with local law is the relevant benchmark for Local Operator services.

#### 16.4 Acceptance of risk

- (a) You acknowledge that international travel, particularly in the regions in which we operate, involves inherent personal risks that may be significantly greater than those in everyday life in Australia, including risks arising from geographic remoteness, political instability, variable infrastructure standards, and cultural differences.
- (b) You must review current travel advisories published by the Australian Department of Foreign Affairs and Trade (DFAT) at [smartraveller.gov.au](http://smartraveller.gov.au) before finalising your booking and before departure. By proceeding, you confirm that you have reviewed applicable DFAT advisories and accept the risks identified therein. To the fullest extent permitted by law, we disclaim all liability for Loss, injury, death, or damage arising from those risks.

#### 16.5 Recreational services

- (a) To the maximum extent permitted by law, where we supply recreational services within the meaning of section 139A of the *Competition and Consumer Act 2010* (Cth), we exclude all liability for death or personal injury arising from our failure to comply with a consumer guarantee under the Australian Consumer Law.
- (b) This exclusion does not apply where death or personal injury is caused by our reckless conduct within the meaning of section 139A(6) of the *Competition and Consumer Act 2010* (Cth).

#### 16.6 Contributory negligence

To the fullest extent permitted by law, our liability to you will be reduced by the extent to which your own negligence, recklessness, or failure to comply with these Terms or our reasonable directions contributed to the loss, injury, or damage you suffered.

#### 16.7 Liability cap

- (a) To the fullest extent permitted by law, our total liability to you under or in connection with these Terms, in contract, tort (including negligence), statute, or otherwise, is limited to the lesser of:
  - (i) the reasonable cost of resupplying the relevant Tour or services; and
  - (ii) the total amount actually paid by you to us for the Tour.

- (b) We are not liable, in any circumstances, for indirect, consequential, special, or punitive Loss of any kind, including loss of enjoyment, loss of opportunity, loss of anticipated savings, loss of revenue, or loss of profit, even if we have been advised of the possibility of such loss.

#### 16.8 Australian Consumer Law

These Terms do not exclude, restrict, or modify any right, remedy, guarantee, or warranty implied or imposed by the Australian Consumer Law or any equivalent State or Territory legislation that cannot lawfully be excluded. To the extent those laws apply, our liability is limited to the maximum extent they permit.

#### 17. Intellectual property

- (a) All copyright, trade marks, patents, design rights, and other intellectual property rights in our Tour itineraries, brand materials, website content, photographs, videos, and marketing materials (**Our IP**) vest in and are owned by us or are licensed to us by third parties. Nothing in these Terms grants you any rights in Our IP.
- (b) We grant you a limited, non-exclusive, non-transferable, revocable licence to access and use Our IP solely for the purpose of your own personal use of the Tour. You must not without our prior written consent:
  - (i) reproduce, copy, republish, or transmit any of Our IP for any commercial purpose;
  - (ii) sub-licence or on-sell any rights in Our IP; or
  - (iii) use our Tour Itineraries to procure substantially similar services from any other operator.
- (c) You must not make any public statement that disparages our business, Tours, staff, or Local Operators. This obligation survives completion of your Tour.

#### 18. Photography and recordings

- (a) We and our Local Operators may take photographs or recordings of Customers during Tours for use in our marketing and promotional materials across any medium. By booking, you consent to this use and acknowledge that you are not entitled to payment or other compensation.
- (b) If you do not consent to use of your image or likeness, you must notify us in writing at least 30 days before Tour departure. This does not affect consent given in respect of

photographs or recordings taken at an earlier date.

- (c) Photographs or recordings involving persons under 18 will only be used in marketing materials with the express prior written consent of the accompanying parent or legal guardian.

## 19. Privacy

- (a) We collect, hold, use, and disclose personal information about you in accordance with our Privacy Policy (available on our website) and in compliance with the *Privacy Act 1988* (Cth) and the Australian Privacy Principles.
- (b) By making a booking, you consent to us:
  - (i) collecting and using your personal information (including sensitive information such as health information) for the purposes of arranging and delivering your Tour; and
  - (ii) disclosing your personal information to Local Operators, airlines, accommodation providers, Government Agencies, and other third parties to the extent necessary to deliver your Tour.
- (c) You acknowledge that some disclosures will be made to recipients located overseas, including in destination countries, and that those recipients may not be subject to privacy laws equivalent to Australian law. Our Privacy Policy contains further information about overseas disclosures.
- (d) In the event of a data security incident affecting your personal information, we will notify you in accordance with our obligations under the *Privacy Act 1988* (Cth) and the Notifiable Data Breaches scheme.

## 20. Complaints

- (a) If a problem arises at any point during your Tour, you must immediately bring it to the attention of our representative or the relevant Local Operator. Prompt notification allows us to address the issue in real time. Failure to do so may reduce or extinguish your entitlement to compensation.
- (b) If the issue is not resolved to your reasonable satisfaction during the Tour, you must submit a detailed written complaint to us within 30 days of the Tour end date. Complaints submitted outside this period will not be considered, except where required by law.

- (c) We will acknowledge receipt within 5 Business Days and provide a substantive response within 30 Business Days, or such longer period as is reasonably necessary if the complaint involves third-party investigation.
- (d) Failure to follow the procedure in clauses 19.1 and 20 may limit or extinguish your rights, including any right to compensation.

## General

### 21. Notices

Any notice given under or in connection with these Terms (**Notice**):

- (a) must be in legible writing, in English and signed by a person duly authorised by the sender;
- (b) must be addressed and delivered to the intended recipient by hand, by prepaid post, or by email at the address last notified by the intended recipient to the sender;
- (c) is taken to be given:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of post, three Business Days after posting (within Australia) or seven Business Days (to an overseas address); and
  - (iii) in the case of email, 2 hours after the time the email is sent, unless the sender receives within that time an automated notification (other than an out-of-office message) that the email has not been delivered,

provided that where a Notice is delivered (or deemed delivered) after 5:00pm on a day that is not a Business Day, the Notice will be deemed delivered at 9:00am on the next Business Day.

Our nominated address for notices is: [info@delwoodtours.com.au](mailto:info@delwoodtours.com.au)

### 22. Cumulative rights

The rights and remedies in these Terms are in addition to other rights and remedies given by law independently of these Terms.

### 23. No waiver

- (a) A failure, delay, relaxation, or indulgence by a party in exercising any power or right conferred by these Terms does not operate as a waiver of that power or right.

- (b) A single or partial exercise of a power or right does not preclude a further exercise of it or the exercise of any other power or right under these Terms.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

#### **24. Severability**

Any term of these Terms that is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of these Terms is not affected.

#### **25. Assignment**

- (a) You may not assign, transfer, or otherwise deal with your rights under these Terms without our prior written consent. We may transfer our rights and obligations under these Terms by written notice to you at any time.
- (b) Any purported assignment, transfer, or dealing in contravention of this clause is ineffective.

#### **26. Variation**

- (a) We may vary these Terms from time to time by giving at least 30 days' written notice. Any variation will apply only to bookings made after the date the updated Terms take effect and will not affect existing confirmed bookings, unless required by law.
- (b) Only we may vary these Terms. No employee, Local Operator, agent, or representative has authority to agree to any variation unless it is in writing and approved by our authorised representative. Any purported variation that does not comply with this clause is of no effect.

#### **27. Survival and merger**

- (a) No term in these Terms merges on completion of any transaction contemplated by these Terms.
- (b) All indemnities contained in these Terms, together with clauses 16 (Responsibility and liability), 17 (Intellectual property), 19 (Privacy), and 20 (Complaints) shall survive termination.

#### **28. Entire agreement**

These Terms, together with the Privacy Policy and the Booking Confirmation, represent the entire agreement between the parties about their subject matter and replace all previous agreements, understandings, representations, and warranties about that subject matter.

#### **29. Further assurances**

Each party must, at its own expense, do all things reasonably necessary (including executing documents) to give full effect to these Terms and the matters contemplated by them.

#### **30. Counterparts and electronic execution**

These Terms may be accepted electronically, including through a booking confirmation process, and such acceptance has the same legal effect as a handwritten signature. To the extent permitted by law, a counterpart may be executed electronically, including by using software or a platform for the electronic execution of contracts.

#### **31. Disputes**

- (a) If a dispute arises between you and us in connection with these Terms or your Tour, either party may give the other written notice describing the dispute in reasonable detail (**Dispute Notice**).
- (b) Within 14 days of a Dispute Notice being received, the parties will attempt to resolve the dispute by direct negotiation in good faith between representatives with authority to settle.
- (c) If the dispute is not resolved within 28 days of the Dispute Notice (or such longer period as the parties agree in writing), either party may refer the dispute to mediation administered by the Australian Disputes Centre (or such other mutually agreed mediator). The costs of mediation will be shared equally unless the mediator orders otherwise.
- (d) If mediation does not resolve the dispute, either party may pursue their rights through a court of competent jurisdiction in accordance with clause 29.
- (e) Nothing in this clause prevents either party from seeking urgent injunctive or interlocutory relief from a court where necessary to protect that party's rights.

#### **32. Governing law and jurisdiction**

- (a) These Terms are governed by and must be construed in accordance with the laws of South Australia, Australia. To the extent permitted by law, such governing law governs all matters arising out of or relating to these Terms or their performance or subject matter, including execution and formation.
- (b) The parties submit to the exclusive jurisdiction of the courts of South Australia and the Commonwealth of Australia in respect of all matters arising out of or relating to these Terms, their performance, or subject matter.