

ONLINE TERMS AND CONDITIONS**1. ACCEPTANCE**

1.1 These Terms and Conditions (**Terms**) are between Party Fun 4 All Pty Ltd (ACN 612 661 702) trading as Party Fun 4 All (ABN 53 612 661 702), its successors and assignees (referred to as **we, us or our**) and you, the person, organisation or entity that purchases Recreational Activities from us (referred to as **you or your**), and collectively the Parties. These Terms apply to all sales made by us to you.

1.2 You have requested specific Recreational Activities (**Recreational Activities**), described on, and able to be booked via, our website www.partyfun4all.com.au (**Site**). You accept these Terms and confirm your booking (**Booking**) by:

- (a) ticking the online acceptance box; and
 - i. paying 20% of the total price for the Recreational Activities (**Price**) as a deposit (**Deposit**) as set out in our quote to you (**Quote**); or
 - ii. paying the total Price as set out in our Quote.

1.4 **You agree that these Terms form the agreement under which we will supply Recreational Activities to you. Please read these Terms carefully.** Please contact us if you have any questions using the contact details at the end of these Terms. Using or purchasing our Recreational Activities indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older. You must not order or use the Recreational Activities if you are under 18 years of age or do not have the consent of a legal guardian who is 18 years or older. If you do not agree to these Terms, you should not use or purchase our Recreational Activities from us.

2. RECREATIONAL ACTIVITIES

- 2.1 We agree to perform the Recreational Activities with due care and skill.
- 2.2 We reserve the right to refuse any request that we deem inappropriate, unreasonable or illegal.
- 2.3 We may provide the Recreational Activities to you using our employees, contractors and third party providers and they are included in these Terms.
- 2.4 Third parties who are not our employees or our direct contractors (**Third Parties**) will be your responsibility. We are not responsible for the products or Recreational Activities provided by Third Parties.
- 2.5 If you request additional Recreational Activities, (**Variation**), we have discretion as to whether

we perform the Variation for you. Any request for a Variation must be made to us in writing. Any Variation is at our absolute discretion and must be via a written agreement between us.

- 2.6 If we agree to a Variation, an adjustment to the Price may be required and we will inform you of any such adjustment to the Price.
- 2.7 If we are unable to accommodate the Variation, we may at our absolute discretion, elect to either:
 - (a) continue to provide the Recreational Activities in accordance with the original Booking; or
 - (b) terminate these Terms and refund to you all or part of the Price,
- 2.8 Any refund that occurs in accordance with clause 2.7 will be refunded or re-scheduled to the amount equal to Recreational Activities, paid for, but for the termination, was not provided. Despite this clause 2.7, we may determine, acting reasonably, that the Recreational Activities have been substantially provided in accordance with the original Booking and if we make such a determination, you may not be entitled to a refund.

3. PRICE, INVOICING AND PAYMENT

- 3.1 You agree to pay us the Price, including any Deposit required.
- 3.2 All amounts on our Site are stated in Australian dollars. All amounts include Australian GST (where applicable).
- 3.3 You will be required to make payment by way of credit card, PayPal or other payment methods as set out on the Site or Quote when making a booking for the Recreational Activities.
- 3.4 The Deposit of 30% of the Price must be paid at the time of booking or otherwise in accordance with the Quote. Unless the Deposit is paid, your Booking is not confirmed and the event dates (**Event Dates**) will not be reserved.
- 3.5 The balance of the Price must be paid at least 7 days prior to the first day of the Event Dates.
- 3.6 Our pricing structure, payment methods and these Terms may be amended from time to time at our discretion.

4. INDIVIDUAL WAIVERS

- 4.1 We will not provide the Recreational Activities to any individual who does not agree to enter into a waiver form.
- 4.2 You must ensure that any individual who does not agree to enter into a waiver form does not participate in the Recreational Activities.
- 4.3 Despite clauses 4.1 and 4.2 you may request that waiver forms not be required by individuals to participate in the Recreational Activities. Where a request is made under this clause and we agree to not require a waiver form to be entered into by each participant, you agree that:

- (a) you will indemnify us against any and all loss, damage, costs including legal costs, or expenses whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, goodwill, reputation, or any indirect, remote, abnormal or unforeseeable loss, or otherwise, suffered by us or claims made against us, arising out of or in connection with the participant's use of the Recreational Activities, even if we were expressly advised of the likelihood of such loss or damage; and
- (b) use your reasonable efforts to ensure that all participants are made aware of and will ensure to adhere to their obligations under a separate 'Ticket Terms and Conditions'.

For the avoidance of doubt, we reserve the right to refuse to provide the Recreational Activities to any participant.

5. GENERAL SAFETY

- 5.1 All decisions in relation to the performance of the Recreational Activities are at our absolute discretion. We may determine at any time that it is no longer safe for the Recreational Activities to be provided and may cease the Recreational Activities and terminate these Terms.
- 5.2 You must ensure that all participants adhere to and comply with our directions and instructions in relation to the Recreational Activities and any item of equipment (**Equipment**).
- 5.3 We may refuse to provide the Recreational Activities to any individual at our absolute discretion.

6. VENUE

- 6.1 You are responsible for locating a suitable venue for the Recreational Activities. We will provide you with information of what kind of venues are suitable for the Recreational Activities. You must notify us of your proposed venue at least 7 days before the Event Dates.
- 6.2 If requested, we can provide you with the locations of potential venues.
- 6.3 We have absolute discretion to determine whether any venue is suitable for the Recreational Activities. Where we believe a venue is not suitable, we may at our absolute discretion:
 - (a) terminate these Terms and refund to you all monies you have paid to us;
 - (b) re-schedule the Event Dates; or
 - (c) organise another venue for you.
 Where we organise another venue for you, there may be fees associated with the venue which will need to be paid by you.
- 6.4 You are responsible for ensuring you obtain all relevant consent, approval, licences, permissions and/ or permits for the provision of

the Recreational Activities at the venue. Where as a result of your failure to obtain any relevant consent, approval, licences, permissions and/ or permits the Recreational Activities must cease, then these Terms will terminate and no refund will be provided.

- 6.5 In organising a venue, you must ensure that you provide for sufficient time to allow us to set up and pack up the Equipment. You are responsible for any additional fees, costs and expenses associated with the venue and which are payable as a result of you having failed to provide sufficient time for us to set up and pack up the Equipment.

7. EQUIPMENT

- 7.1 We inspect all Equipment prior to providing the Recreational Activities and to ensure that they are fit for use for their intended purpose.
- 7.2 You acknowledge and agree that:
 - (c) it is your responsibility to ensure the Equipment is used by all participants for its intended purpose and in accordance with our instructions and that we are not liable for, and you indemnify us against, any Claim, loss, damage, or harm caused to you, third parties (including any guests or members of the general public) or to your or their property, that may arise as a result of the Equipment not being used for its intended purpose or in accordance with our instructions; and
 - (d) you will indemnify us for the cost and expense of repairing any damage or replacing any item of Equipment that occurred as a result of the Equipment not being used for its intended purpose or in accordance with our instructions.

8. YOUR OBLIGATIONS AND WARRANTIES

- 8.1 You warrant that throughout the term of these Terms that:
 - (e) you will comply with any of our instructions and direction in relation to the Recreational Activities;
 - (f) there are no legal restrictions preventing you from agreeing to these Terms;
 - (g) you will cooperate with us and provide us with information that is reasonably necessary to enable us to perform the Recreational Activities as requested by us from time to time, and comply with these requests in a timely manner;
 - (h) the information you provide to us is true, correct and complete;
 - (i) you will not infringe any third party rights in working with us and receiving the Recreational Activities;
 - (j) you will inform us if you have reasonable concerns relating to our provision of Recreational Activities under these Terms,

- with the aim that we and you will use all reasonable efforts to resolve your concerns;
- (k) you are responsible for obtaining any consent, approval, licences, permissions and/ or permits from other parties necessary for the Recreational Activities to be provided, at your cost, and for providing us with the necessary consent, approval, licences, permissions and/ or permits;
- (l) you consent to the use of your name and Intellectual Property in relation to the Recreational Activities in a way which may identify you including for the purposes of marketing, promoting, or advertising the Recreational Activities online or via any other form, including via social media;
- (m) if applicable, you hold a valid ABN which has been advised to us; and
- (n) if applicable, you are registered for GST purposes.
- 8.2 You warrant that you will not canvass, employ, induce or attempt to employ, induce, solicit or entice away from us, any employee or contractor that was employed by or contracted to us during the term that we provide Recreational Activities to you or the prior 12 month period.
- 9. FEEDBACK AND DISPUTE RESOLUTION**
- 9.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Recreational Activities, please contact us.
- 9.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
- (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 9.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 10. CANCELLATION AND TERMINATION**
- 10.1 You may cancel your Booking with written notice to us. If you cancel your Booking then these Terms terminate and:
- (a) if the cancellation is made more than 7 days before the Event Dates, then we will refund to you all monies you have paid to us; or
- (b) if the cancellation is made between 7 to 4 days before the Event Dates, then we will retain the Deposit and refund to you all other monies you have paid to us; or
- (c) if the cancellation is made between 3 - 1 day(s) before the Event Dates, then you must pay us the Price less the Deposit; or
- (d) if the cancellation is made within 24 hours of the Event Dates, then you must pay us the full amount of the Price.
- 10.2 All venue related fees (if applicable) are non-refundable where the Booking is cancelled by you.
- 10.3 Where the venue is organised by us and the venue becomes unavailable during the Event Dates for whatever reason, we may at our absolute discretion:
- (a) terminate these Terms and refund to you all monies you have paid to us; or
- (b) re-schedule the Event Dates; or
- (c) relocate to another venue.
- 10.4 We may at any time as a result of bad weather, cancel the Booking and we may elect to either:
- (a) terminate these Terms and refund to you all or part of the Price; or
- (b) re-schedule the Event Dates; or
- (c) relocate to another venue.
- 10.5 Any refund or re-scheduling that occurs in accordance with clause 10.4 will be refunded or re-scheduled to the amount/ time equal to Recreational Activities, paid for, but for the termination, was not provided. Despite this clause 10.5, we may determine, acting reasonably, that the Recreational Activities have been substantially provided in accordance with the Booking and if we make such a determination, you may not be entitled to a refund or re-scheduling of the Event Dates.
- 10.6 Either Party may terminate these Terms, if there has been a material breach of these Terms, subject to following the dispute resolution procedure.
- 10.7 We may terminate these Terms immediately, at our sole discretion, if:
- (a) in our opinion the Equipment is not being used for its intended purpose, not in accordance with our directions or in a manner that is unsafe;
- (b) in our opinion the Recreational Activities can no longer be provided safely for any reason;
- (c) if we discover that an individual who has not agreed to enter into a waiver form is

- participating in the Recreational Activities (subject to clause 4.3);
- (d) we consider that a request for the Service is inappropriate, improper or unlawful;
 - (e) you fail to provide us with clear or timely instructions to enable us to provide the Recreational Activities;
 - (f) we consider that our working relationship has broken down including a loss of confidence and trust;
 - (g) you act in a way which we reasonably believe will bring us or our Site into disrepute;
 - (h) you provide us with incorrect payment details or any other incorrect information; or
 - (i) for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe.
- 10.8 On completion of the Recreational Activities, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 10.9 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 11. OUR INTELLECTUAL PROPERTY**
- 11.1 The work and materials that we provide to you in carrying out the Recreational Activities contains material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the Intellectual Property rights in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.
- 11.2 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any Intellectual Property rights in our Materials, except as stated in these Terms or with our written permission.
- 11.3 Your use of our Materials does not grant you a licence, or act as a right to use, any Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 11.4 You must not breach our Intellectual Property rights by, including but not limited to:
- (c) altering or modifying any of the Materials;
 - (d) creating derivative works from the Materials; or
 - (e) using our Materials for commercial purposes such as onsale to third parties.

12. CONFIDENTIAL INFORMATION

- 12.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than, where necessary, Third Party Suppliers) other than as set out in our Privacy Policy, which is available on the Site; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; only to use the Confidential Information for the purpose for which it was disclosed by you, to provide better quality Recreational Activities to you, and not for any other purpose.
- 12.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.
- 12.3 These obligations do not apply to Confidential Information that:
- (a) is authorised to be disclosed;
 - (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
 - (c) is received from a third party, except where there has been a breach of confidence; or
 - (d) must be disclosed by law or by a regulatory authority including under subpoena.
- 12.4 This clause will survive termination of these Terms.
- 13. PUBLICITY, PROMOTION, MARKETING AND ADVERTISING**
- 13.1 **Publicity:** You consent to us using advertising or publically announcing that we have undertaken work for you.
- 13.2 **Promotion, marketing and advertising:** You acknowledge and agree that we may during the provision of the Recreational Activities take photos and or videos of you and other participants using the Recreational Activities. You acknowledge that by agreeing to these terms we may use these photos and videos for the purpose of promoting, marketing and advertising the Recreational Activities online or via any other form, including via social media.
- 13.3 You acknowledge and agree that you will not use any photos or videos that are taken during the provision of the Recreational Activities for your or any third party's commercial benefit. Your use of any photos or videos taken by you of the Recreational Activities are strictly limited to personal use only.
- 14. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**

- 14.1 **Australian Consumer Law (ACL):** If you are a consumer as defined in the ACL, the following applies to you: *"We guarantee that the Recreational Activities we supply to you are rendered with due care and skill; fit for the purpose that we advertise, or that you have told us you are acquiring the Recreational Activities for or for a result which you have told us you wish the Recreational Activities to achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent we are to exclude liability; our total liability for loss or damage you suffer or incur from our Recreational Activities is limited to us re-supplying the Recreational Activities to you, or, at our option, us refunding to you the amount you have paid us for the Recreational Activities to which your claim relates."*
- 14.2 **Delay:** Where the provision of Recreational Activities depends on your information or response, we have no liability for a failure to perform the Recreational Activities in the period set out on the Site where it is affected by your delay in response, or supply of incomplete or incorrect information.
- 14.3 **Referral:** We may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their Recreational Activities. We make no representation or warranty about the third party advice or provision of Recreational Activities, and we disclaim all responsibility and liability for the third party advice or provision of Recreational Activities, or failure to advise or provide Recreational Activities.
- 14.4 **Warranties:** To the extent permitted by law, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 14.5 **Liability:** To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees and terms relating to the Recreational Activities and these Terms, except those set out in these Terms, including but not limited to:
- (a) implied or express guarantees, representations or conditions of any kind, which are not stated in these Terms including in relation to the Equipment and venues;
 - (b) the Recreational Activities being unavailable; and
 - (c) any loss, damage, costs including legal costs, or expense whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, or otherwise, suffered by you or claims made against you, arising out of or in connection with your inability to access or use the Recreational Activities, the use of our Recreational Activities and the late supply of Recreational Activities, even if we were expressly advised of the likelihood of such loss or damage.
- 14.6 **Limitation:** Our total liability arising out of or in connection with the Recreational Activities, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the Price or one hundred dollars (AUD \$100) if you have not paid us any part of the Price.
- 14.7 This clause 14 will survive termination of these Terms.
- 15. INDEMNITY**
- 15.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
 - (b) any breach of these Terms; and
 - (c) any misuse of the Recreational Activities and associated equipment, the Site or the Materials from or by you, your employees, contractors, agents or participants.
- 15.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your or a participants use of the Recreational Activities including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 15.3 This clause will survive termination of these Terms.
- 16. GENERAL**
- 16.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 16.2 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from

- any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 16.3 **GST:** If and when applicable, GST payable on the Recreational Activities will be set out on our Quotes. By accepting these Terms you agree to pay us an amount equivalent to the GST imposed on these charges.
- 16.4 **Relationship of parties:** These Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.
- 16.5 **Assignment:** These Terms are personal to you. You must not assign or deal with the whole or any part of your rights or obligations under these Terms without our prior written consent.
- 16.6 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 16.7 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate our agreement with you by giving you 5 business days' notice in writing.
- 16.8 **Notice:** Any notice required or permitted to be given by either Party to the other under these conditions will be in writing addressed to you at the address provided at the time you order the Recreational Activities. Our address is set out at the end of these Terms. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission.
- 16.9 **Jurisdiction & Applicable Law:** These terms are governed by the laws of New South Wales and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales.
- 16.10 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.
- 17. DEFINITIONS**
- 17.1 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement or otherwise.
- 17.2 **Confidential Information** includes confidential information about you, your credit card or payment details, the business, structure, programs, processes, methods, operating procedures, activities, products and Recreational Activities, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential".
- 17.3 **GST** means GST as defined in the *A New Tax System (Goods and Recreational Activities Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 17.4 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs (whether or not registered or registrable), any corresponding property rights under the laws of any jurisdiction, discovery, circuit layouts, trade names, trade secrets, secret process, know-how, concept, idea, information, process, data or formula, business names, company names or internet domain names.
- 17.5 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).
- Contact details:**
Party Fun 4 All Pty Ltd (ACN 612 661 702) trading as Party Fun 4 All (ABN 53 612 661 702)
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Last update: August 2016

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