

KIW Pty Ltd – Terms and Conditions

This **Agreement** is made on the date shown on the Booking Form between:

1. KIW Pty Ltd ACN 665 145 228 of 29 Snodgrass Lane, LOORANA TAS 7256 (trading as King Island Walks)(**KIW**); and

2. The legal entity or entities described on the Booking Form (**Customer**).

RECITALS

A. KIW is the provider of guided walking tours.

B. The Customer has engaged KIW to provide the Services, and KIW has agreed to provide the Services to the Customer, on the terms and conditions of this Agreement.

OPERATIVE PART

1. Definitions

1.1 In this Agreement, unless the context otherwise requires:

(a) **Agreement** means this Agreement, its recitals, Clauses and the Booking Form;

(b) **Booking Form** means the booking form detailing the scope of the Services selected, including, but not limited to the Fees, the date of the Services and the personal details of the Customer.

(c) **Business Day** means a day other than a Saturday, Sunday or a public holiday in Tasmania;

(d) **Clause** means a clause of this Agreement;

(e) **Competition and Consumer Act** means the *Competition and Consumer Act 2010* (Cth);

(f) **Fees** mean the fees specified on the Booking Form charged by KIW to the Customer for provision of the Services;

(g) **Force Majeure Event** means any fire, flood, earthquake, elements of nature or acts of God, strikes, acts of war, terrorism, riots, civil disorders and labour disputes or other industrial disturbances or government embargoes and systemic electrical, telecommunications or other utility failures which prevents the provision of the Services or any other omission or circumstance beyond the reasonable control of a Party.

(h) **Intellectual Property** means any copyright and analogous rights, trade marks, service marks, designs, inventions (including patents), trade, business or company names, trade secrets, know-how or other proprietary information, and similar industrial, commercial and intellectual property rights whether or not registered or registrable.

(i) **Intellectual Property Rights** means all intellectual property rights of whatever nature throughout the world, whether created before or after the provision of the Services, including rights in respect of or in connection with any Intellectual Property (including any right to apply for or renew any registration of such rights) and, without limitation, any right arising from or capable of arising from any legislation both within and outside the Commonwealth of Australia;

(j) **Party** means a Party to this Agreement and its successors, trustees and permitted assigns;

(k) **Personnel** means directors, employees, secondees, agents, officers and sub-contractors of the Parties or Related Entity;

(l) **Related Entity** has the same meaning as “related entity” under Section 9 of the Corporations Act 2001 (Cth);

(m) **Services** means the services described in the Booking Form;

(n) **Sub-clause** means a sub-clause of this Agreement;

(o) **Tour Rules** means the rules specific to each separate provision of the Services, which may be published on KIW’s website or provided to the customer verbally or in writing prior to, or during, the provision of the Services.

(p) Items appearing in bold type in the Schedules will be interpreted as defined terms.

2. Interpretation

2.1 In the interpretation of this Agreement unless the context otherwise requires:

(a) Words denoting a person will include corporations, statutory corporations, partnerships, joint ventures, associations, boards, governments or semi-government agencies or authorities.

(b) Words denoting the singular number will include the plural number and vice versa.

(c) Words that are gender neutral or gender specific include each gender.

(d) A reference to a statute or a regulation also refers to any statute or regulation amending, or consolidating or re-enacting same.

(e) Money references are references to Australian currency, unless otherwise stated.

(f) Headings used in this Agreement are for convenience and ease of reference only, and are not part of this Agreement and will not be relevant or affect the meaning or interpretation of this Agreement.

(g) This Agreement may not be construed adversely to KIW simply because KIW prepared the Agreement.

(h) If any provision or part provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement will remain otherwise in full force apart from such provision or part provision which will be deemed deleted.

3. Scope

Subject to payment of the Fees in accordance with the provisions of this Agreement, KIW will provide the Services to the Customer.

4. General Relationship

4.1 The Customer engages KIW as an independent contractor/supplier.

4.2 KIW and its Personnel are neither agents, representatives nor employees of Customer.

5. Booking

5.1 All guests travelling who are aged 18 or over must complete their personal information in the Booking Form themselves. For all guests aged 17 or under, the information must be completed by a parent or legal guardian.

5.2 If you have completed the Booking Form on behalf of another person, we rely on the authority of the person making the booking to act on behalf of any other traveller on the booking and that person will bind all such travellers to these terms and conditions.

6. Services

6.1 KIW will provide to the Customer the Services in accordance with the terms of this Agreement.

6.2 The Customer must pay the Fees to KIW in accordance with Clause 7.

6.3 KIW may increase the Fees in accordance with the provisions of this Agreement if the Services are varied by the Customer, and KIW will notify the Customer of such increase with the relevant tax invoice.

6.4 Subject to clause 10 and the terms and conditions of this Agreement, KIW will provide the Services to the Customer on the date, and at the time, specified on the Booking Form.

6.5 The Customer must provide free of charge all information at the request of KIW which is reasonably necessary, in the opinion of KIW, for KIW to diligently and safely provide the Services under the terms and conditions of this Agreement.

6.6 KIW is not otherwise required to provide any other services to the Customer under this Agreement.

7. Fees

7.1 The Customer must pay KIW the Fees as specified in the Booking Form.

7.2 Unless otherwise agreed with KIW, the Customer must pay KIW the Fees prior to the provision of the Services.

7.3 The Customer may pay the Fees by direct deposit, credit card (Mastercard, Visa or American Express), EFTPOS or cash. Payments must be made in AUD, unless with the prior written approval of KIW (which it may withhold in its absolute discretion).

7.4 Payments of the Fees made by direct deposit must be received not later than 10 Business Days prior to the scheduled date for the provision of the Services.

7.5 KIW may require the Customer to permit a pre-authorisation of payment of the Fees from the Customer’s nominated account. In this case, payment will be automatically processed on the conclusion of the Services.

7.6 Interest will accrue on all overdue Fees at a rate of 10% per annum, compounding monthly.

7.7 Fees are exclusive of all taxes including without limitation any GST, and the Customer must pay, and keep KIW indemnified against any taxes only which are legally due and payable by the Customer in respect of the Fees but excluding income taxes.

7.8 Payments made by credit and debit cards may be subject to additional processing fees.

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7.9 The prices quoted cover (and only cover) the following:

- (a) pick up and return from the collection and return point designated by KIW;
- (b) transport to the start of the relevant walk experience;
- (c) food and limited beverages specified in the Booking Form (or by later agreement between the Parties in writing); and
- (d) qualified staff for the duration of the walk.

7.10 Any cost not referenced in Clause 7.9 is to be borne by the Customer.

8. Public Holiday Surcharge

8.1 If your departure falls on a public holiday an increased walker rate will be automatically applied to your departure to cover the increased cost of operation.

9. Cancellations by the Customer

9.1 If the Customer wishes to cancel its booking for the Services, it must do so by notice in writing.

9.2 Cancellations made by the Customer:

- (a) more than 2 weeks prior to the scheduled departure date for the Services, will be subject to a full refund by KIW;
- (b) between 8 and 14 days prior to the scheduled departure date for the Services, will be subject to a 25% forfeiture of the Fees to KIW;
- (c) between 3 and 7 days prior to the scheduled departure date for the Services, will be subject to a 50% forfeiture of the Fees to KIW; and
- (d) less than 3 days prior to the scheduled departure date for the Services, will be subject to a full forfeiture of the Fees to KIW.

9.3 If the Customer:

- (a) cancels the Services after commencement of the Services; or
- (b) does not present at the collection point designated by KIW on the scheduled date at the agreed time for the Services,

no refund of the Fees will be applied.

10. Force Majeure and Cancellations by KIW

10.1 The safety of the Customer is important to KIW. KIW may cancel provision of the Services or modify the Services on short notice if KIW, in its absolute discretion, deems that any component of the Services cannot be completed safely. This may occur during provision of the Services.

10.2 KIW will not be liable for any delay or failure to perform its obligations under this Agreement if such a failure or delay is due to a Force Majeure Event.

10.3 On the occurrence of a Force Majeure Event, the non-performing Party must:

- (a) promptly notify the other Party; and
- (b) use its best endeavours to resume performance whenever and to whatever extent possible without delay.

10.4 If KIW requires a minimum number of participants for the provision of a walk experience, and that minimum number is not met, KIW reserves the right to cancel the Services. KIW will, however, make reasonable endeavours to seek additional participants or consolidate tour groups so that the booked Services will proceed. KIW may request that the Customer alters its itinerary to this end.

10.5 If KIW cancels the Services as originally scheduled for any reason, the Customer may require KIW to:

- (a) hold a credit towards a future alternative booking of services to be used within 24 months, including a guarantee that there will be no additional charges for the future walk (provided that the scope of the services do not differ from the Services booked);
- (b) provide a replacement walk that complements your existing travel arrangements (subject to availability);
- (c) provide a replacement walk at a later date convenient to both parties; or
- (d) with the exception of cancellations associated with a Force Majeure Event, we will refund your booking payment for the cancelled walk.

10.6 Where the Services are cancelled by KIW under this Clause 9, KIW will not be liable for any costs incurred by the Customer supplemental to the Services or associated with travel to and from the collection and return point for the Services designated by KIW. This includes, but is not limited to, other cancellations of services, connecting transport, additional accommodation and food expenses. KIW strongly recommends that the Customer obtains travel insurance at the time of booking the Services.

11. Evacuation during provision of Services

11.1 KIW reserves the right to procure the evacuation of the Customer in the event of any injury or unforeseen illness. Where KIW reasonably considers it necessary to procure the evacuation of the Customer, the full cost of the evacuation will be borne by the Customer, including but not limited to helicopter costs, any associated staff wages and ground transportation costs.

12. Special Requirements

12.1 The Customer acknowledges and agrees that each participant must be, in the reasonable opinion of KIW, in good fitness and capable of safely participating in the walk experience. Any special requirements for participants must be made known to KIW at the time of booking. This includes but is not limited to physical disabilities, relevant medical conditions, and dietary requirements.

13. Assumption of risk

13.1 The Customer acknowledges and agrees that the nature of the activities engaged in, by the provision of the Services, are more challenging and demanding with a commensurately higher risk compared with activities in urban environments and involve potential exposure to injury and possible death. The potential dangers and risks associated with these activities may include (but are not limited to) difficult and dangerous terrain, physical exertion for long periods, extremes of weather including sudden and unexpected changes and evacuation difficulties in the event of injury.

14. Removal from Tours

14.1 KIW reserves the right to remove the Customer from a tour for any reason (acting reasonably), including but not limited to non-adherence to KIW's Tour Rules. KIW reserves the right to deny, or at any time cease, participation on a tour by the Customer or any participant who, in KIW's opinion, is intoxicated, disorderly, a hazard to themselves, other participants or third parties, abusive, not physically or mentally capable of completing the tour the subject of the Services, or objectionable in any other way. KIW will not be liable for any additional expenses incurred as a result of the Customer's removal or non-participation.

15. Minors

15.1 Participants under the age of 18 must be accompanied by a parent or guardian, except where prior arrangement has been made with management.

15.2 The Customer acknowledges and accepts that not all tours offered by KIW are appropriate or available for people under the age of 18. The Customer must contact KIW prior to engaging the Services to notify KIW that the Customer intends for a minor to participate in the Services and confirm suitability of the Services for a person under the age of 18.

16. Tour Locations and Surrounding Environment

16.1 the Services are often conducted in sensitive areas. Whilst KIW aims to provide the Customer with access to areas of natural and cultural significance, the Customer must, insofar as it is reasonably possible to do so:

- (a) respect the surroundings when participating in the tours the subject of the Services;
- (b) not interfere with, pick up, alter or remove any plant, animal or other natural, historical or cultural feature; and
- (c) stay to the nominated route, carry and appropriately dispose of all rubbish; and
- (d) use minimal impact toileting procedures.

17. Exclusions and Limitation of Liability

17.1 To the fullest extent permitted by law (subject to the Competition and Consumer Act) and except as expressly provided to the contrary in this Agreement:

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(a) all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this Agreement or to this Agreement generally, are excluded. Where legislation implies in this Agreement any condition or warranty and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or the exercise of or liability under such term, such term will be deemed to be included in this Agreement. To the extent permitted by law, the liability of KIW for any breach of such term will be limited to the supplying of the services again.

17.2 KIW excludes all statutory liability, tortious liability (including negligence), conditions and warranties implied by custom, the general law or statute and liability for all special, indirect, incidental, consequential or punitive damage and economic loss, loss of profits, loss of revenue, loss of bargain, loss of goodwill, loss of anticipated savings, or loss of use of products or equipment, arising out of or relating to these terms and conditions, the Services, or any failure to supply or delay in supplying the Services, whether or not KIW was aware or should have been aware of the possibility of such loss or damage.

17.3 Subject to Clause 17.1, to the fullest extent permitted by law (subject to the Competition and Consumer Act) and except as expressly provided to the contrary in this Agreement the Parties' total liability for breach of this Agreement will be limited to the value of the total Fees paid under this Agreement for the Services. To the fullest extent permitted by law (subject to the Competition and Consumer Act), neither Party's liability will include any amount for indirect, special or consequential loss or damage, loss of profits, loss of opportunity or loss of commercial advantage under any circumstances.

17.4 From time to time, KIW may provide the Customer's data to a third party storage provider. KIW will ensure it uses reasonably qualified third parties for the purpose of storage of any Customer data. If loss arises as a result of the loss or disclosure of Customer data held by a third party, then, to the fullest extent permitted by law (subject to the Competition and Consumer Act) KIW will not be liable for any loss or damage arising from same.

18. Mutual Indemnity

18.1 The Customer agrees to indemnify and hold harmless KIW and each of its officers, directors, employees, servants, agents or consultants against any losses, costs, claims, damages, expenses, liabilities, proceedings or demands which any of them may directly or indirectly incur or suffer as a consequence of any breach by them of their obligations under these terms and conditions.

19. Intellectual Property Rights

19.1 Nothing in this Agreement transfers to Customer any Intellectual Property Rights of KIW. At all times KIW remains the owner of all Intellectual Property Rights in the Intellectual Property, KIW brands, products, training materials and marketing materials and any improvements to KIW's existing tools and methodologies that may be created, written or otherwise brought into existence by or on behalf KIW in the course of performing its obligations under this Agreement.

19.2 The Customer acknowledges that KIW remains the sole owner of the Intellectual Property Rights arising in relation to the Services (including any future services).

19.3 Each Party warrants that any materials supplied to the other Party by the first Party does not infringe the Intellectual Property Rights of any person, company, organisation or legal entity.

20. Variations

20.1 No variation, modification or alteration of any part of this Agreement will be valid except in writing signed by each Party.

20.2 If the Customer desires variations to this Agreement, the Customer may request such variations in writing from KIW (which it may accept or deny in its absolute discretion).

21. Waiver

21.1 No right of either Party under this Agreement will be deemed to be waived except by notice in writing signed by such Party. Such a waiver by either Party will not prejudice its rights in respect of any subsequent breach of this Agreement by the Customer.

21.2 Any express statement of a right of either Party under this Agreement is without prejudice to any other right of such Party expressly stated in this Agreement or arising at law.

22. Governing Law

22.1 This Agreement will be governed by and construed according to the law of the State of Tasmania.

22.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of Tasmania and the Commonwealth of Australia (Tasmanian based registries) and any courts hearing appeals from such Courts.

23. Notices

23.1 Notices under this Agreement may be delivered by certified mail or by email to the address of the Party specified in the Booking Form.

23.2 Notices will be deemed given in the case of:

- (a) Certified mail, on actual delivery to the address of the Party as evidenced by documentation of the carrier of the notice; and
- (b) Email: at the time and on the day that the notice appears in the recipient's email inbox.

23.3 A Party may change its address for service number by giving notice of that change to each other Party.

24. Survival

24.1 The provisions of this Agreement which are capable of having effect after the expiration of this Agreement will remain in full force and effect following the expiration of the Agreement.

25. Entire Agreement

25.1 This Agreement constitutes the entire Agreement between the parties for the subject matter referred to in this Agreement. Any prior arrangements, agreements, representations or undertakings are superseded.

25.2 This Agreement is not to be construed as creating a joint venture, partnership or agency situation between the parties and neither Party may represent such. Under no circumstances may any Party obligate or bind the other Party to any Agreements, arrangements, contracts or understanding or represent that they have such authority.

