

# Sea Swift Pty Ltd ("Sea Swift")

## Terms and Conditions for Carriage of Passengers

### Definitions

"**Ancillary Services**" means all tours or activities engaged in by the Passenger during the course of the Voyage, including but not limited to on-shore transport, recreational services, air travel, boat charter for fishing trips, accommodation and transshipment services.

"**Australian Consumer Law**" means Schedule 2 of the CCA.

"**Carrier**" includes Sea Swift, any demise charterer and manager of the Vessel.

"**Civil Liability Act**" means the Civil Liability Act 2003 of Queensland.

"**CCA**" means the Competition and Consumer Act 2010 (Cth).

"**Consequential Loss**" means loss or damage suffered by a Passenger that is indirect or consequential, including but not limited to, loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, loss of use, loss of interest, damage to credit rating or loss or denial of opportunity.

"**Contract**" means the agreement entered into between the Carrier and the Passenger, which is subject to these Terms and Conditions, for carriage as a passenger on the Carrier's Vessel.

"**Master**" is the person appointed by or on behalf of the Carrier to act in that role on the Vessel for the Voyage and anyone who from time to time is appointed to act with the Master's authority during the Voyage.

"**Passenger**" means the person entering this Contract with the Carrier and all those persons (such as family members) on whose behalf the Passenger has also booked, whether as fare paying or non-fare paying persons, and including family members of crew, potential cadets, and persons being carried on an ex-gratia basis.

"**Service Providers**" means all persons, corporations and businesses which provide "Ancillary Services" in the course of the Voyage.

"**Vessel**" includes all vessels on which the Passenger is to be carried by the Carrier.

"**Voyage**" encompasses all time spent by the Passenger from the time of first embarkation to the time of final disembarkation from the Vessel.

### Liability

- (i) The Passenger and any of his or her property shall be carried by the Carrier on the Vessel at the Passenger's own risk and the Carrier shall not be liable for any loss, damage, injury, illness or death suffered by the Passenger nor for any loss of or damage to any property (including valuables) or luggage of the Passenger, even if caused by the negligence of the Carrier; unless in the case of the property it has been deposited for safe keeping with the Master or with the purser and the loss or damage to that property is caused by the negligence of the Carrier, in which case the liability of the Carrier shall be limited to the value of the damaged goods, the value of the property or luggage or \$1,500 in total for all luggage or property lost or damaged, whichever shall be the lesser value. Should the Passenger's negligence cause or contribute to the loss or damage of the property, then the compensation for such loss or damage payable by the Carrier shall be reduced in proportion to the negligence or contributory negligence of the Passenger.  
(ii) Without limiting the foregoing the Carrier excludes liability for all excluded recreational liabilities arising out of the supply of recreational services within the meaning of the CCA.

### Travel Insurance

- It is recommended that you take out appropriate travel insurance.

### Ancillary Services

- (i) The Carrier is not liable for any loss which is incurred due to the actions or default of any person, persons or corporation, supplying Ancillary Services, and no claim shall be made by or through the Passenger with regard thereto. The Passenger indemnifies the Carrier from and against all actions, suits, costs, claims and demands in relation thereto.  
(ii) The Carrier, in booking any such services on behalf of the Passenger does so only as a booking agent and the Service Providers are solely responsible for the provision of the service and all such bookings are made at the Passenger's own risk.

### Himalaya Clause

- The Passenger undertakes that no claim or allegation shall be made against any employee, agent or sub-contractor of the Carrier, or any supplier of Ancillary Services, which imposes or attempts to impose upon any of them or upon any vessel owned or operated by any of them, any liability whatsoever in connection with this Contract and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing, every such employee, agent and sub-contractor and supplier of Ancillary Services shall have the benefit of all provisions herein benefitting the Carrier as if such provisions were expressly for their benefit; and in entering into this Contract, the carrier, to the extent of those provisions, does so not only on its own behalf, but also as agent and trustee for such employees, agents and sub-contractors and supplier of Ancillary Services.

### Passenger's Property

- All baggage and property (including valuables) shall be deemed to have been delivered to the Passenger in an undamaged condition unless written notice of any loss or damage is given to the Carrier within three (3) days of the Passenger disembarking from the vessel.

### Medical Treatment and Costs

- (i) The Passenger warrants that he/she and those travelling with them are fit to travel at the date of embarkation and to their knowledge are not carrying any communicable illness or disease.  
(ii) There are no medically qualified persons on board the Vessel, which will be travelling to isolated areas where emergency medical assistance may not be available. If a Passenger is carried whose age, mental or physical condition is such as to involve any hazard or risk to their health, the Carrier shall not be liable for any illness, injury, or disability, or death attributable to such condition or to the aggravation of any such condition.  
(iii) Any cost or expense reasonably incurred by the Carrier in attending to the health, wellbeing or safety of the Passenger is payable by the Passenger to the Carrier on demand.

### Limitation of Carrier's Liability

- If notwithstanding any provisions in these Terms and Conditions, such as by reason of any provisions of the CCA, the Australian Consumer Law or the Civil Liability Act, the Carrier has a liability to the Passenger, the Carrier's liability is limited to supplying the Passenger with an equivalent Voyage or monetary equivalent of the value of the fare paid or payable for the subject Voyage or the loss suffered by the Passenger, whichever is the lesser amount.

### Time Limitation

- The Carrier shall be discharged from all liability whatsoever for any loss or damage suffered by the Passenger, unless suit is brought within six months after the Passenger disembarks from the Vessel.

### Authority of Master

- The Passenger shall obey all instructions given to passengers by the Master and the Carrier.

### **Search of Passenger or their Possessions**

10. The Master may, for security or other reasons, have to search the baggage or the person of the Passenger and the Passenger hereby agrees to and gives permission for such search, and absolves the Carrier from any liability in respect of any such search and any loss or damage occasioned thereby.

### **Restraint of Passenger**

11. (i) The Master and the Carrier reserve the right to cancel a booking and/or refuse embarkation at any time to a Passenger if, in their absolute discretion, either of them consider that the health of the Passenger or the health, safety or enjoyment of any other passenger or crew might be endangered.  
(ii) The Master may confine, sedate or disembark the Passenger where the Passenger's conduct, in the sole discretion of the Master or the Carrier, may inconvenience or jeopardise the enjoyment, health or safety of any other passenger or member of the crew of the Vessel.  
(iii) In acting under sub-clauses 11(i) or 11(ii), neither the Master, nor any person acting with the authority of the Master, nor the Carrier shall have any liability to the Passenger for any loss, expense or consequential loss suffered by the Passenger.

### **Itinerary**

12. The Carrier will do everything it can to maintain its planned itinerary but weather conditions, mechanical difficulties, civil unrest, the necessity to provide towage or salvage services, commercial necessity and many other unforeseen circumstances may necessitate a deviation from the planned itinerary. The Carrier and/or the Master of the Vessel may at their complete and absolute discretion cause the Vessel to: deviate from its advertised route and/or to delay and/or to cancel any part of the voyage; substitute or change the Vessel or ports of call; tow or assist any vessel or perform any similar act, render salvage services (life or property) and in these events the Passenger agrees that the Carrier shall not be liable or required to refund any portion of the fare, or to make any other compensation, or be liable for damages or Consequential loss, expense or loss of time or inconvenience to the Passenger.

### **Early Termination of Voyage**

13. The Carrier shall not be required to refund to the Passenger any portion of the fare nor shall the Carrier be liable for any expenses or costs of whatsoever nature incurred by reason of any transportation, medical, accommodation or living expenses incurred by the Passenger where the Passenger leaves the Vessel prior to the completion of the voyage.

### **Force Majeure**

14. The Carrier will be excused from any failure or delay in performing any of its obligations if the failure or delay is caused by war or warlike action, civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempt at usurpation of power, epidemics or quarantine restrictions or any act of government or governmental authority, court or commission, sabotage, confiscation, nationalisation, seizure, restraint, detention, arrest or hijacking or any industrial action or any like activity to the foregoing.

### **Salvage**

15. The Passenger will not have any right to bring a claim for salvage and will not do so.

### **Cancellation**

16. All deposits and fares paid by the Passenger will be dealt with or, if applicable, be refunded in full or in part, in accordance with the following:
- (i) cancellations confirmed more than 30 days prior to the sailing date - full refund to the Passenger;
  - (ii) cancellations between 30 and 14 days prior to the sailing date - forfeiture of deposit to Carrier;
  - (iii) cancellations between 14 and 7 days prior to the sailing date - 50% of total fare forfeited to Carrier;
  - (iv) cancellation within 7 days prior to the sailing date or non-boarding at time of sailing - 100% of total fare forfeited to Carrier.

### **Consumer Legislation**

17. Your Contract may be subject to consumer legislation (such as the Australian Consumer Law or the CCA) which cannot be excluded by private agreement, and these terms and conditions do not seek to change any protection which you have under such provisions.

### **Severability of Terms and Conditions**

18. Each clause or sub-clause of these terms and conditions shall be severable from each other and if for any reason any clause or sub-clause is invalid or unenforceable that shall not prejudice or in any way affect the validity or enforceability of any other provision of this these terms and conditions.

### **Law and Jurisdiction**

19. This Agreement is governed by and is to be construed in accordance with the laws of Queensland and the Passenger and Carrier agree to submit to the exclusive jurisdiction of the Queensland courts.