

Deed of Waiver of Risk and Indemnity of Goods

DATED

BETWEEN:

OF

AND

ROTTNEST RENTALS PTY LTD ACN 689 578 318

1. DEFINITIONS

Carts means “Burleigh” wagons, foldable beach trolleys and other collapsible carts supplied to the Customer by the Owner.

Customer refers to the person, firm, organization, partnership, corporation or other entity hiring the Goods from the Owner, whether pursuant to the Hire Agreement or otherwise.

Goods means all equipment supplied to the Customer by the Owner whether pursuant to any Hire Agreement or otherwise, including but not limited to:

- (a) Snorkel masks;
- (b) “CoolCabana” beach shelters, beach shades, beach umbrellas and other beach shelters;
- (c) Carts, as defined in this Waiver;
- (d) Wetsuits;
- (e) “SunChill” floating pontoons;
- (f) Eskies and other drink coolers;
- (g) Sun lounges; and
- (h) Boogie boards.

Hire Agreement means the agreement between the Owner and Customer for the hire of Goods which includes:

- (a) any Credit Application;
- (b) this Waiver;
- (c) any Hire Agreement provided to the Customer by the Owner as owner of the
Goods including all Conditions of Hire.

Hire Period means any time during which the Hire Agreement between the Owner and Customer for the hire of the Goods is in effect.

Legislation means any legislation of any country, state or territory in force from time to time, and any rule, regulation, ordinance, by-law, statutory instrument, order or notice at any time made under that legislation.

Owner of the Goods means Rottnest Rentals Pty Ltd ("Rottnest") ACN 689 578 318 trading as Rottnest Rentals.

Waiver, as the context permits, means this Deed of Waiver and Indemnity of Goods, and any attachments, annexures, supplemental documents and/or variations thereof.

You must read, understand and sign the waiver conditions below.

TERMS AND CONDITIONS OF WAIVER AND INDEMNITY

2. USE, OPERATION, AND MAINTENANCE

- 2.1. The Customer agrees and acknowledges that the use of the Goods may carry with it dangers and risks of injury (including but not limited to lacerations, hematoma, sprains, muscular strains and tears, fractures, spinal injury and concussions), illness and/or death and the Customer agrees to accept all dangers and risks associated with their use of the Goods.
- 2.2. The Customer warrants that the Goods will not be used by anyone other than the Customer (including where the Customer is an organisation, school or company).
- 2.3. The Customer must exercise due care and precaution in their use of the Goods and must use the Goods solely for the purpose for which it was designed and not for any other purpose.
- 2.4. The Customer agrees to comply with all occupational health and safety laws and any other applicable Legislation relating to their use of the Goods and related operations.
- 2.5. The Customer agrees to use the Goods solely in accordance with the manufacturer's guidelines including but not limited to any applicable weight restrictions;
- 2.6. The Customer agrees to only use the Carts on roads or designated beach access paths.
- 2.7. In the event that the Goods breaks down or becomes unsafe to use during the Hire Period the Customer must:
 - 2.7.1. immediately stop using the Goods;
 - 2.7.2. take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Goods;
 - 2.7.3. take all steps necessary to prevent any further damage to the Goods; and
 - 2.7.4. not repair or attempt to repair the Goods without the Owner's

written consent.

3. DISCLAIMER

- 3.1. To the greatest extent permitted by law, the Owner disclaims all liability for and does not give any warranties to the Customer as to the condition of the Goods except those required under the *Competition and Consumer Act 2010* (Cth);
- 3.2. the Owner gives no warranty that the Goods are suitable for the Customer's purpose if not used in accordance with any manufacturer's guidelines; and
 - 3.2.1. this Waiver;
 - 3.2.2. any Hire Agreement provided to the Customer by the Owner including all Conditions of Hire;

4. RISK

- 4.1. There are **RISKS** associated with any activity the Customer is about to engage in with the use of the Goods. The Customer hereby confirms and acknowledges that:
 - 4.1.1. All outdoor-based recreational and water activities have inherent risks, dangers, and hazards;
 - 4.1.2. There are risks specifically associated with participation in outdoor-based recreational and water activities and accidents can and often do happen which may result in personal injury, death or property damage.
 - 4.1.3. Prior to undertaking any such outdoor-based recreational and water activities, the Customer must ensure they are aware of all the risks involved, including those risks associated with any health condition the Customer may have.
 - 4.1.4. By signing this form, the Customer acknowledges, agrees, and understands that all outdoor-based recreational activities and water activities may involve risk.
 - 4.1.5. The Customer agrees and undertakes any such risk voluntarily and at their own risk. The Customer acknowledges that the assumption of risk and warning above constitutes a 'risk warning' in accordance with relevant Legislation.
 - 4.1.6. These risks and dangers may be caused by the negligence of the Owner or employees of the Owner, the negligence of participants, accidents, breaches of contract, the forces of nature or other causes. Risks and dangers may arise from foreseeable or unforeseeable causes including, but not limited to weather and/or water conditions, risk of drowning while in water and such other risks, hazards and dangers that are inherent to recreational activities that take place in an outdoor or water-based recreational environment.

- 4.1.7. The Owner hires Goods on the understanding that each Customer acknowledges the risks involved and agrees to indemnify and reimburse the Owner against any incident or omission that may adversely affect the Owner or third parties during the hire.

5. WAIVER

5.1. The Customer hereby confirms and acknowledges that:

- 5.1.1. The Customer assumes all responsibility for their own safety while participating in any outdoor-based recreational and water activities associated with their use of the Goods;
- 5.1.2. The Customer is aware of their own abilities while undertaking any activity using the Goods and will only use the Goods in accordance with those abilities and competency as well as in accordance with any manufacturer's guidelines and/or directions from the Owner, the Owner's employees or other authorities;
- 5.1.3. The Customer will monitor and supervise any children under the age of 18 years under their care or supervision while using the Goods;
- 5.1.4. The Customer is not under the influence of drugs (other than prescribed by your GP);
- 5.1.5. The Customer is not under the influence of alcohol;
- 5.1.6. As the representative of your group, organisation, school or company (if applicable), the Customer agrees to advise your group of these requirements of hire and participation;
- 5.1.7. By the Customer's participation in any these outdoor based recreational and water activities and/or use of Goods, the Customer hereby assume all risks and dangers and all responsibility for any losses and/or damages flowing from their use of the Goods, whether caused wholly or partly by the negligence or other conduct of the Owner, or by any other person, including the Customer.
- 5.1.8. The Customer confirms that they are in good health, not under the influence of any drugs (other than prescribed medication) or alcohol of any kind and that the Customer's participation in any outdoor-based recreational and water activities and use of Goods is voluntary.
- 5.1.9. The Customer accepts full responsibility for all adults and children accompanying the Customer.
- 5.1.10. The Customer on behalf of themselves and their personal representatives hereby voluntarily agree to release, discharge and indemnify the Owner, its employees, servants or agents

from any and all claims, actions or losses for bodily or mental injury, death, loss of services or otherwise which may arise out of your use of the Goods. The Customer specifically understands that they are releasing, discharging and waiving any claims or actions that they may have at the present time or in the future for negligent acts or other conduct by the Owner, its employees, servants or agents.

- 5.1.11. Except as expressly provided to the contrary in the Hire Agreement all items, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to the Owner's obligations under the Hire Agreement are excluded.
- 5.1.12. Where any Act of Parliament implies a term, condition or warranty in this Waiver and that Act prohibits provisions in a contract excluding or modifying the application, exercise or liability under that term, condition or warranty, such term, condition or warranty will be deemed to be included in this Deed provided that the liability of the Owner for breach of the term, condition or warranty is limited to (at the Owner's election) the repair or replacement of the Goods or the supply of substitute Goods (or the cost of doing so) and in no event will any liability for damages be greater than the cost of the Goods being supplied under the Hire Agreement.
- 5.1.13. The Owner shall not be liable to the Customer for consequential loss or damage (including loss of actual or anticipated profits or revenue, economic loss of any kind or any loss suffered as a result of any claim or claims by third parties) in contract, tort, under legislation, under statute or otherwise from or in relation to the Goods, the Hire Agreement or this Waiver.

6. Indemnity

- 6.1. The Customer on behalf of themselves and their personal representatives hereby voluntarily agree to release, discharge and indemnify the Owner, its employees, servants or agents from any and all proceedings, costs claims, actions or losses of any kind resulting from any default in the performance of their obligations under clause 2 of this Waiver .
- 6.2. The Customer on behalf of themselves and their personal representatives hereby voluntarily agree to release, discharge and indemnify the Owner, its employees, servants or agents from any and all proceedings, costs claims, actions or losses of any kind for property damage to the Goods or otherwise which may arise out of the Customer's use of the Goods to the extent the

loss or damage is caused by the Customer's acts or omissions.

7. Severability of Provisions

- 7.1. Where, due to the operation of any relevant Legislation, common law or equitable principle, any provision(s) contained within this Waiver is rendered void, the voided provision(s) shall be severed from the rest of this Waiver and the remaining operable provisions of this Waiver shall be amended *mutatis mutandis* such that the severance of any void provisions shall not materially hinder the operation of the remaining operable provisions.
- 7.2. For the avoidance of doubt any provisions contained within this Waiver that are voidable as opposed to void *ab initio* shall continue to be effective and shall not be severed from this Waiver until such a time as the relevant provisions are rendered void, whether due to the operation of any relevant Legislation, common law or equitable principle, or other factual circumstances.
- 7.3. Each obligation in this Waiver is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Waiver.
- 7.4. Each indemnity in this Waiver is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Waiver. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Waiver.

8. Joint and Several Obligations

- 8.1. Obligations under and in respect of this Waiver that bind two (2) or more persons bind them jointly and severally and the rights of two (2) or more persons under or in respect of this Agreement enure to them jointly and severally.

9. Governing law and jurisdiction

- 9.1. This Deed is governed by the law in force in the State from time to time.
- 9.2. Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in the State and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

10. Your Details

Name (Required):

Date (Required):

Select Date:

Organisation (Required if applicable):

Email (Required)

Phone Number (Required)

Drivers Licence Number

Emergency Contact Name (Required)

Emergency Contact Phone Number (Required)

Hire Dates (Please enter the start and end days) (Required)

Hire Agreement (Required)

This Deed of Waiver and Indemnity of Goods (Required)

I have read the Deed of Waiver and Indemnity and fully understand the paragraphs above and by signing it, agree it is my intention to exempt and release the Owner from liability for personal injury, property damage and/or wrongful death caused by negligence or any other cause specified in the Deed and I agree to the terms of this Waiver on behalf of any children under my care or supervision.

EXECUTED AS A DEED

DATED:

SIGNED:

