

# Waiver Terms and Conditions Diamantina Touring Company

In completing and submitting this waiver, you agree to be bound by these conditions which constitute the agreement between Australian Bush Hospitality Pty Ltd (Diamantina Touring Company) ABN 14 051 678 212, hereinafter called ABH, and the various land management authorities who grant the license to operate this adventure tour being the licensor and you. No purported variation of these conditions will be effective unless in writing and signed by a person so authorized by Diamantina Touring Company.

## 1. How to Book

To reserve your place on one of the tours, you should complete the online booking form or complete the manual Booking Form and send it, together with a non-refundable deposit of \$400 per person per trip to ABH or to your travel agent.

## 2. Payment

The prices quoted on [diamantina-tour.com.au](http://diamantina-tour.com.au) are for payment by cash, cheque, money order or credit card (the latter is subject to a surcharge). Prices quoted in this brochure or on [diamantina-tour.com.au](http://diamantina-tour.com.au) are also subject to change under the conditions moreover detailed at paragraph 14 of these terms and conditions. The balance of the tour price is payable to ABH 45 days prior to departure. Prices are quoted in Australian Dollars. If payment of the balance of the tour price is not received by ABH by the required time you will be taken as having cancelled the tour and cancellation charges in accordance with condition 4 will apply.

## 3. Amendments/Transfers

**AMENDMENTS:** If you wish to make amendments to your tour arrangements, you must notify ABH in writing. Each amendment to your tour arrangements will incur a \$50 administration fee and you will be liable for any increase in airfares or operational expenses occasioned by the amendment. All administration fees must be paid before departure.

**TRANSFERS:** If you wish to transfer from one tour to another, you must notify ABH in writing. Once ABH receives your notice the transfer will take effect subject to the following. Transfers may only be made to another tour to commence within 12 months of your original departure date and the following transfer charges will apply:

- If your notice is received more than 70 days prior to your original departure date, a \$100 transfer fee will apply. In addition, any increase in airfares or operational services will be payable by you: or
- If your notice is received within 70 days prior to your original departure date, 50% of your original tour price will be forfeited provided your notice is received at least 35 days prior to your original date, or 45 for self-drive 4WD trips, otherwise 100% of your tour price will be forfeited.

Note: Any requested amendment to tour arrangements or transfer from one tour to another is subject to availability and the agreement in writing of ABH however, the transfer of a trip from one person to another is not permitted.

## 4. Cancellations

If you wish to cancel your tour, you must notify ABH in writing. Once ABH receives your notice, cancellation will take effect subject to the following:

- If cancellation takes place more than 70 days prior to your departure date, your full deposit will be forfeited.
- If cancellation takes place between 70 and 35 days prior to your departure date, 50% of the tour price will be forfeited.
- If cancellation takes place less than 35 days prior to your departure date, 100% of the tour price will be forfeited.

The tour price is quoted as a package. No partial refunds or credit will be given for services not used. Any amount forfeited, which has not then been paid to ABH by you, will be recovered from you by ABH as a debt due and payable.

## 5. Health & Fitness Requirements

You must be in good health and physical condition.

On receipt of your Booking Form, ABH will send you a medical questionnaire to be completed by you or your doctor and returned to us as proof that you are fit enough to participate in the tour. This must be returned to ABH at least 70 days prior to departure or if tour is booked closer to departure date, with booking form. You may complete and sign the form yourself and return to ABH. If you are 70 years or over or have a pre existing medical condition you must have your doctor complete and sign the medical form before returning to ABH. If you suffer from severe muscular, chest, heart or bronchial disorders, or if you are a severe asthmatic, you are strongly advised against participating. Tours take place in remote areas where there is little or no access to normal medical services or hospital facilities for serious problems. Evacuation, where necessary, can be prolonged, difficult and expensive. Medical and evacuation expenses will be your responsibility. ABH reserves the right in its absolute discretion to refuse a participant the right to participate in a tour on medical or fitness grounds.

## 6. Medical Disclosure

You declare and warrant that

- you are in good health and mental and physical fitness at the time of booking this tour;
- you have disclosed to ABH every matter concerning your health and mental and physical fitness of which you are aware, or ought reasonably be expected to know, that is relevant to ABH's decision to permit you to go on the adventure tour;
- immediately upon any adverse change in your health or fitness that may be likely to affect ABH's decision to permit you to go on the adventure tour, you will notify ABH in writing of any such adverse change.
- ABH are permitted to disclose medical information to our consultant doctor.
- ABH's consultant doctor may exclude you from a tour if he/she deems it necessary. You acknowledge that the obligation to disclose under this condition continues from the time of booking the tour through to departure and extends for the duration of the tour. If you fail to comply with the duty of disclosure in this condition and if ABH would not have permitted you to undertake the tour, or continue participation of the tour, had you made full disclosure under this condition, ABH will not be liable, except to the minimum extent required by law, for personal injury, death or property damage or loss incurred by you.

## 7. Tour Leaders

- In this condition, 'nominated tour leader' includes both the nominated tour leader and any other nominated person given at any time the task of leading or supervising any aspect of the tour.
- ABH's nominated tour leaders take their responsibilities seriously and if for any reason a nominated tour leader believes, in his or her absolute discretion, that you should not participate in the tour, before your departure, even if you pass your medical, he/she may exclude you from the tour. In this event, but subject to condition

5, you will be offered the option of taking another tour considered suitable for you or a full refund of the purchased tour excluding but not limited to visa, passport and vaccination charges or departure, gear, purchases, airport and airline taxes. If for any reason during a tour the nominated tour leader considers you should not participate further due to you committing an illegal act, or in the opinion of the nominated tour leader, your behaviour is causing or is likely to cause danger, distress or annoyance to others, or your fitness or health is inadequate, he or she may direct you not to continue and you must follow the nominated tour leader's instructions. In this case you will not be entitled to any refund. Travel insurance may compensate you depending on the circumstances.

- ABH reserves the right to change, at any time, the nominated tour leader of any tour. If that happens, ABH will try to ensure that the alternative tour leader has expertise commensurate with that of the nominated tour leader. Any such change by ABH will not give rise to any right on your part to cancel the tour or claim any expenses, loss or damage which may be suffered.

## 8. Cancellation due to tour booking numbers

ABH reserves the right to cancel any tour prior to departure in the event that there are too few people booked on a tour in which case you will be given a full refund of the tour price paid by you. You will not be entitled to claim any additional amounts or seek any compensation for any injury, loss, expenses or damage (either direct or consequential) or for any loss of time or inconvenience which may result from such cancellation (including but not limited to visa, passport and vaccination charges, or departure, gear purchases, airport and airline taxes).

## 9. Route changes, Postponement, Cancellation or Delay

ABH reserves the right to:

- cancel or modify any routes within the tour or objectives set out in the itinerary, or
- substitute different or equivalent routes within the tour in place of cancelled or modified routes, or
- postpone, cancel or delay (either in relation to the departure or arrival times or the duration of the tour) any such aspect of the tour if, in the absolute discretion of ABH, it is necessary to do so due to inclement weather or conditions that are otherwise likely to be hazardous or dangerous or due to any other adverse or threatening conditions, or in the absolute discretion of ABH, there is a likelihood of any such event occurring which may impact upon the safety of the participants, or if an act or omission of a third party prevents the tour or the aspect of the tour being undertaken in accordance with your booking or for any other reason considered necessary by ABH. In the event of any change, modification, cancellation postponement or delay under this condition, you acknowledge that you will have no right of refund of the tour price (whether in whole or in part) and no right to claim compensation for any injury, loss or damage or other additional expenses incurred by virtue of the change, modification, cancellation postponement or delay.

## 9. (continued)

ABH also reserves, in its absolute discretion, the right to cancel any tour due to any government travel warning or advice, or any change in such warning or advice. In this event, condition 4 applies as if you had transferred or cancelled the tour at the date that ABH cancelled the tour due to the governmental travel warning or advice. Travel insurance may compensate you depending on the circumstances.

## 10. Itineraries and brochures

Itineraries and other details are published in good faith as statements of intention only and reasonable changes in the itinerary and related items may be made where deemed necessary or advisable by ABH. The information contained in ABH's brochures, itineraries, and internet site is, to the best of ABH's belief, correct at the date of publishing.

## 11. Insurance

Personal travel insurance is not included in the tour price. It is a condition of booking a tour with ABH, and your responsibility to ensure that you are adequately insured for the full duration of the tour in respect of illness, injury, death, loss of baggage and personal items and cancellation and curtailment. You must provide evidence to ABH that you have obtained personal travel insurance. You must ensure that your personal travel insurance covers all of the activities you expect to participate.

## 12. Tour Prices

Package prices are based on ground costs, fuel prices, airfares, exchange rates and assumptions made at the time of printing the brochure. ABH tries its utmost not to increase tour prices (in full or part), however sometimes increases are outside its control. ABH reserves the right to amend tour prices (or any part) without notice at any time before and including the departure date. Any increase in tour prices must be paid prior to the departure date.

## 13. Exclusions from tour price

Without limitation, the following items are excluded from the tour price:

- personal travel insurance;
- visa, passport and vaccination charges;
- departure, airport and airline taxes;
- extra meals, transport costs, accommodation costs, or other expenses not included in the itinerary; laundry, postage, personal clothing, medical expenses & items of a personal nature; emergency evacuation and/or emergency search charges;
- additional expenses caused by delay, accidents or disruption of planned itineraries;
- tips, onboard beverages and excess baggage charges.

## 14. Force Majeure

If ABH is prevented (directly or indirectly) from performing any of its obligations under this agreement by reason of act of God, strikes, trade disputes, fire, breakdowns, interruption of transport, government or political action, acts of war or terrorism, acts or omissions of a third party or for any other cause whatsoever outside ABH's reasonable control, ABH will be under no liability whatsoever to you and may, at its option, by written notice to you either cancel the tour or take any other action as specified in condition 9.

## 15. Assumption of risk

You acknowledge that:

- by the very nature of adventure travel and trekking holidays, they are more challenging and demanding with a commensurately higher level of risk compared with conventional holidays, and involve potential exposure to injury and possibly death; and
- in the regions in which adventure travel is undertaken, standards of accommodation, transport, health care, hygiene, safety and service provision generally are often not as high as those standards in your country of residence and may require flexibility and patience on your part; and
- the additional dangers and risks associated with adventure travel may include difficult and dangerous terrain; extremes of weather, including sudden and unexpected changes; remoteness from normal medical services and from communications; and evacuation difficulties in the event of illness or injury; and
- the enjoyment and excitement of adventure travel is derived in part from the inherent dangers and risks associated with adventure travel and that those inherent dangers and risks are a reason why you wish to undertake the adventure tour, and
- you have submitted your booking for the tour after giving due consideration of relevant travel information including, without limitation, any relevant information or advice given by the governments of Australia, New Zealand and Canada, the British Foreign Office and US Department of State and that it is your responsibility to acquaint yourself that information or advice, for the above reasons you therefore accept the inherent and increased dangers and risks associated with the proposed adventure tour and the accompanying risk of injury, death or property damage or loss.

## 16. Disclaimer

You accept that:

- ABH will not be liable for any breach of any law by any person with whom you travel on the tour; and
- you may not rely on any representations concerning the tour made by ABH which are not contained in these conditions.

## 17. Release and waiver of liability

• In consideration of ABH accepting your booking application and in consideration of you being permitted by ABH to join the tour to the extent permitted by law:

- you release, waive, discharge, hold harmless and agree to indemnify ABH and its officers, employees, agents, licensees, guides and other representatives and the land management authorities in the states in which the tour is conducted (each of whom are collectively referred to as "ABH and its employees") from all claims, actions or losses for bodily injury, property damage, wrongful death, loss of services, loss profits, consequential, exemplary, indirect or punitive damages or otherwise which may arise out of or occur during your travel in connection with the tour or any activities conducted in conjunction with the tour unless caused by the willful negligence or wrongful act of ABH and its employees; and regardless of the situation or circumstances giving rise to the claim you waive any claims you have, or may at any time have, against ABH and its employees and you agree, by accepting the additional inherent dangers and risks associated with the tour, not to make any claim against or seek any compensation from ABH and its employees in respect of any personal injury, illness or death suffered by you or damage to or loss of property sustained by you as a result of your participation in the tour.

To the extent permitted by law, sections 60 and 61 of the Competition and Consumer Act 2010 (Cth) do not apply to this contract and are excluded. If sections 60 and 61 of the Competition and Consumer Act (Cth) do apply, ABH's liability is limited to resupplying the services or paying the costs of resupplying the services, whichever is the lesser.

## 18. Miscellaneous

WARNING UNDER THE FAIR TRADING ACT 1999

Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that the recreational services it supplies to you—

- are rendered with due care and skill; and
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- might reasonably be expected to achieve any result you have made known to the supplier.

Under section 32N of the Fair Trading Act 1999, the supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the Fair Trading Act 1999 if you are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in this form.

NOTE: The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. Gross negligence is defined in the Fair Trading (Recreational Services) Regulations 2004.

## 19. Jurisdiction

This agreement and the rights and obligations of the parties will be construed and take effect in accordance with and be governed by the laws of Victoria, Australia.

PARTICIPANT 1 SIGNED: \_\_\_\_\_ DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

PARTICIPANT 2 SIGNED: \_\_\_\_\_ DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_