



TERMS AND CONDITIONS



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1 Definitions

The following terms have the following meanings:

Live Ningaloo	means Renlyn Australia Pty Ltd (A.C.N. 162 736 003) t/a Live Ningaloo and otherwise referred to as (“we”, “our”, “us”) as the case may be in this Agreement.
Special Conditions	means the special conditions which may from time to time be contained in the Booking Form, or under clause 3 of this Agreement.
Booking Form	means the form provided to you which contains the details of the Services which we agree to perform in return for payment of the Fee.
Fee	means the fees payable by you as specified in the Booking Form.
Services	means the services specified in the Booking Form.
Law	means the law as amended from time to time in the State of Western Australia and the Commonwealth of Australia
Agreement	means the agreement between you and Live Ningaloo on the terms and conditions set out in this document and the Booking Form.

2 Whole Agreement

- (a) The terms and conditions set out in this Agreement apply to the Services provided by Live Ningaloo to you.
- (b) No other term or condition other than the terms and conditions set out in:
 - (i) this Agreement; and
 - (ii) the Booking Form,will form part of the agreement between you and Live Ningaloo.

3 Special Conditions

This Agreement is subject to special conditions that may, from time to time, be specified in the Booking Form or under clause 3 of the Agreement.

3.1 COVID 19

- (a) Notwithstanding anything to the contrary in the Agreement or Booking Form, due to coronavirus (COVID-19), the following conditions currently apply to the provision of the Services.
- (b) We reserve the right to reschedule your booking in order to create a minimum of four (4) person per tour. We may ask you in our Booking Form that provide us with your arrival and departure dates so that we can strive to book your tour within such timeframes.
- (c) If we are unable to provide the Services to you within the time frame provided to us by you, we may place you with another operator and refund you the difference in the Fee (if any) paid by you to us under this Agreement and the Booking Form. If, after having conducted



reasonable attempts, we are unable to provide a replacement with another operator, we agree to provide you with a full refund of the Fee.

- (d) You acknowledge and agree that:
 - (i) you may be subject to a temperature reading prior to boarding;
 - (ii) we reserve the right not to take you on a tour if you are not feeling well, if the temperature reading indicates a higher than usual temperature or you otherwise have cold or flu symptoms; and
 - (iii) we may amend the conditions of the Agreement at any time by written notice to you in the event of changes in the Law which may affect our ability to perform this Agreement or provide the Services.
- (e) In the event we refuse to allow you to board in accordance with subclause 3.1(d)(ii), we will not provide you with a full refund of the Fee paid by you to us.
- (f) Live Ningaloo is not liable for any loss or damage suffered which may result as a consequence of Live Ningaloo exercising its rights under subclause 3.1(d)(ii) other than to the extent provided for under subclause 3.1(e) of this Agreement.

3.2 Confirmations

- (a) When making a booking, either by phone, email or through our automated online system, we will provide you with email confirmation from our reservation system with your booking number and detailed information about your booking.
- (b) The Booking Form and this Agreement (including all annexures) form a contract between us and you with respect to the provision of the Services specified in the Booking Form.
- (c) It is your responsibility to check that the details in the Booking Form are correct (including but not limited to the booking date). If you become aware that any of the information within the Booking Form is incorrect and/or requires change, you must notify us by in writing by email.
- (d) If you inform us of changes to your booking in accordance with subclause 3.2(c) of this Agreement, you will receive another email confirmation through our official reservation system updating your information.
- (e) If you do not receive confirmation from our reservation system within twenty-four (24) hours, your booking has not been updated. Please get in touch with our office to ensure the details have been transmitted. For the avoidance of doubt, any inaccuracies or corrections will not invalidate this Agreement.
- (f) Without limiting other methods of accepting the terms of this Agreement (such as signing it or by making a booking and checking the “agree and accept” check-box on our online systems), a confirmation of a proposed tour by email from us to you and payment by you of a deposit will constitute your acceptance of the terms of this Agreement in its entirety.

3.3 Inconsistencies

- (a) In the event of any inconsistency between the provisions of this Agreement and the Special Conditions set out in the Booking Form or Clause 3 of this Agreement, the Special



Conditions (whether contained in Clause 3 of this Agreement of the Booking Form) will prevail to the extent of such inconsistency.

4 Provisions of Services and Fees

- (a) We will provide the Services specified in the Booking Form in accordance with the terms of this Agreement and with reasonable care.
- (b) You agree to pay us the Fee specified in the Booking Form in return for the provision of the Services by us.
- (c) The Fee is exclusive of GST and is subject to any additional charges which may be prescribed under the terms of this Agreement.

5 Exclusions

- (a) The Services and the Fee are subject to the exclusions (if any) specified in the Booking Form or this Agreement.

6 Promotions

- (a) From time to time we may advertise special offers and/or discounts.
- (b) Any special offer or discount advertised by us will not alter the terms of this Agreement and will not affect either Live Ningaloo's or your rights and/or obligations under this Agreement.

7 Payment Terms

- (a) In order to secure your booking we require payment of the Fee in full within two (2) days after booking the tour and in any event within fourteen (14) days prior to the date of the tour.
- (b) If payment of the Fee declines, we may make attempts to contact you via the mobile phone number and/or email address provided by you when making your booking.
- (c) Payment of the Fee must be made in Full by way of one (1) transaction. Separate payments are not accepted by Live Ningaloo.
- (d) If we are unable to secure payment of the Fee, you agree:
 - (i) to forfeit your booking; and
 - (ii) we have the right allocate your booking to a third party.

7.2 Group & Exclusive or Private (rent the whole boat) bookings

- (a) Notwithstanding anything to the contrary in this Agreement, for all group bookings, private tours or exclusive hires, the following applies:
 - (i) there must be a minimum of five (5) people (unless otherwise permitted by the Special Conditions);
 - (ii) payment of the Fee must be received in full by us within two (2) days after the booking;



7.3 Flexi Rate Bookings

- (a) In 2022 we provide a flexible booking option when booking with us (**Flexible Bookings**). This is not provided for 2023 bookings.
- (b) Flexible Bookings are subject to the following terms:
 - (i) a 20% increased Fee; and
 - (ii) enable you to cancel your booking up to 24 hours before the date we are due to perform the Services, at no extra cost.
- (c) If Flexible Bookings are cancelled in accordance with clause subclause (b)(ii) of this clause, we will credit to you the full amount of the Fee paid by you under your booking to be used to book any service with us within 12 months from the date of cancellation.
- (d) A rebooking in accordance with clause (c) of this clause carries a \$25.00 rebooking fee.
- (e) If you purchase Flexible Bookings but do not give us more than 24 hours' notice in accordance with subclause 7.3(b)(ii), the full amount of the Fee paid to us by you is forfeited in its entirety, and Live Ningaloo has no liability to you to refund the Fee or perform the Services.
- (f) Clause 7.3 does not apply to bookings made in accordance with clause 7.5 of this Agreement.

7.4 Peak Period Pricing

- (a) We reserve the right to increase the Fee by up to 15% during peak periods. Peak Period Pricing will be applied to bookings in 2022 during peak periods. We will not be applying Peak Period Pricing in 2023.
- (b) A peak period is determined by us at our sole discretion and is specified in the Booking Form which forms part of the Agreement between you and Live Ningaloo.
- (c) You agree at the time of making a booking with us to pay the increased Fee specified in the Booking Form during a peak period.

7.5 Agents and Promotional Bookings

- (a) This clause applies if you are an agent or third party making a booking on behalf of the person(s) as specified in the Booking Form to whom we are to provide the Services (**Agent Booking**).
- (b) If the Agent Booking is for:
 - (i) 5 or more persons, you agree to pay:
 - (A) 30% of the Fee as a deposit at the time of placing the booking with us (**Agent Deposit**); and
 - (B) The balance of the Fee after the Agent Deposit, forty-five (45) or more days prior to the date we are due to perform the Services.



- (ii) 4 or less persons, you agree to pay the full Fee forty-five (45) or more days prior to the date we are due to perform the Services.
- (c) The Agent Deposit is none-refundable notwithstanding any term to the contrary contained in the Agreement.

7.6 Credit Card Fees, Transactions and Payment Details

- (a) You acknowledge and agree to a booking fee when placing a booking online. Live Ningaloo is not responsible for any other fees which may be associated with booking online (this also includes cancellations).
- (b) If you wish to avoid incurring the associated booking fees when booking online, you may call us and arrange payment of the Fee by way of credit card. Payments made by credit card do not incur a booking fee unless otherwise provided for under the terms of this Agreement.
- (c) Live Ningaloo does not accept payments by way of:
 - (i) Cheque; and
 - (ii) bank transfer.
- (d) Subclause 7.6(c)(ii) does not apply to Agent Bookings. If you are an agent and wish to make payment by way of bank transfer, please contact us.

7.7 Gift Cards

- (a) Gift cards must be presented upon redemption (the unique code must be used in the case of online redemption).
- (b) Gift cards can only be used to purchase goods and/or the Services from Live Ningaloo.
- (c) The purchaser of any gift card is responsible for the gift card.
- (d) Lost or stolen gift cards, or gift cards which are used without the purchaser's authorisation, will not be refunded or replaced by Live Ningaloo. Live Ningaloo accepts no liability for lost or stolen gift cards.
- (e) Gift cards expire thirty-six (36) months after the date of supply.
- (f) Gift cards cannot be redeemed for cash or hard currency.

7.8 No Sighting Policy

- (a) Clause 7.8 only applies to whale shark swimming/snorkeling tours which are offered by us between the 15 April to 15 July each year.
- (b) If you book a whale shark swimming/snorkeling tour with us, and we are unable to sight a whale shark during your tour with us, we agree to provide you with a free whale shark swimming/snorkeling tour on the next available day (which may not be the following day), at no extra cost to you (**Second Whale Shark Tour**).
- (c) If you have departed Ningaloo and are unable to attend the Second Whale Shark Tour, we agree to provide you with a non-transferrable voucher which will remain valid for two (2) years from the date of issue.



7.9 Rescheduling & Cancellation

- (a) No refund will be payable by Live Ningaloo in the event that you or a member of your group under your booking does not arrive at the time specified in our email confirmation.
- (b) All cancellations must be made in writing and received by Live Ningaloo up to fourteen (14) days before the date the Services are to be performed by Live Ningaloo.
- (c) You may request in writing a rescheduling of your booking with Live Ningaloo up to fourteen (14) days before the date the Services are to be performed by Live Ningaloo. Live Ningaloo will take all reasonable steps to reschedule your booking and is subject to availability.
- (d) A written request in accordance with subclause 7.9(c) of this Agreement incurs a \$25.00 re-booking fee.
- (e) If you make a written request to alter the date of your booking with less than fourteen (14) days' notice to Live Ningaloo, you will remain liable to pay the Fee in full, and any additional Fee associated with the new booking, at the sole discretion of Live Ningaloo.
- (f) Live Ningaloo is not liable for any refund whether in whole or in part under this Agreement if you booked your tour with a third party. If you booked through a third party, all refunds will be processed by the third party.
- (g) Any booking obtained through a third party may contain additional charges relating to cancellation of your booking.
- (h) For bookings containing more than five (5) persons, cancellation or rescheduling in accordance with the terms of this Agreement with:
 - (i) more than forty-five (45) days' notice will result in forfeiture of 30% of the Fee; and
 - (ii) less than forty-five (45) days' notice will result in forfeiture of 100% of the Fee.
- (i) Subclause 7.9(h) does not apply to changes to the booking if the change relates only to the number of persons under your booking and does not result in less than five (5) persons attending under your booking.

7.10 Medical Conditions

- (a) You agree to fully disclose to us any and all medical conditions which may reasonable interfere with, or impact on, our ability to provide the Services to you. You agree that the provision of this information is reasonably necessary for us to consider whether we are able to provide the Services to you safely.

8 Live Ningaloo's Liability

- (a) Except to the extent permitted under the Law, Live Ningaloo (including its officers, directors, managers, principals, stockholders, related bodies corporate, partners, members, employees, agents and representatives) will have no liability (whether for breach of contract, under indemnity, negligence or on any other legal or equitable basis) to you for any loss, liability, damage or expense arising out of or in connection with the performance or failure to perform the Services.
- (b) You agree to take reasonable steps to mitigate any and all loss which you may suffer or incur in connection with the provision of the Services by Live Ningaloo.



- (c) You acknowledge and agree that the Waiver and Release contained at Annexure A forms part of the Agreement, and the terms contained in the Waiver and Release are binding as between you and Live Ningaloo.

9 Indemnity by you

- (a) You agree to pay the reasonable costs incurred by Live Ningaloo in the event that you lose or damage any of Live Ningaloo's property.
- (b) You agree to pay the amount invoiced by Live Ningaloo upon receipt of the invoice specifying the amount, and the property owned by Live Ningaloo which you broke/lost.
- (c) Without limiting the foregoing, you indemnify us against all losses, damages, costs or expenses incurred or suffered by us (including our officers, directors, managers, principals, stockholders, related bodies corporate, partners, members, employees, agents and representatives) arising out of your breach of the terms of this Agreement or negligent, willful or wrongful act or omission.

10 Photographs and Videos

- (a) Unless you advise us to the contrary in writing, you agree that all photographs and/or videos taken by Live Ningaloo (or its agents or employees) are the property of Live Ningaloo, and that Live Ningaloo may, from time to time, use the photographs and/or videos for advertising, promotional or other business-related purposes, and that Live Ningaloo will not require your consent for the aforementioned uses.
- (b) You agree to credit any photographs created by Live Ningaloo which may be used by you for social media or marketing purposes by:
 - (i) using Live Ningaloo's social media handle; and
 - (ii) the business name 'Live Ningaloo'.
- (c) You agree and acknowledge that any and all photographs and/or videos taken by you within National Park Waters are subject to the same terms and conditions contained within our licensing agreement with The Parks and Wildlife Service of Western Australia (**Parks and Wildlife Agreement**).
- (d) You agree that under the Parks and Wildlife Agreement, any and all photographs and/or videos, will vest immediately upon creation in Live Ningaloo.
- (e) You agree not to sell or use for promotional purposes, any photograph or video taken by you during our performance of the Services without the consent of Live Ningaloo.

11 Confidentiality and Intellectual Property Rights

- (a) You agree that all correspondence sent by us to you is confidential and may be subject to privilege or otherwise protected under the Law.
- (b) You acknowledge and agree that Live Ningaloo owns intellectual property rights in all of its services, documents and any other material which may be provided to you from time to time by Live Ningaloo in accordance with this Agreement and the Booking Form.



12 Customer Reviews and Feedback

- (a) Live Ningaloo encourages all customers to provide feedback on their experience with Live Ningaloo.
- (b) You agree that any negative feedback has the potential to significantly damage Live Ningaloo's brand and reputation.
- (c) You agree that, prior to the making of any negative comment (whether oral or in writing) with respect to Live Ningaloo's performance of the Services, you will raise your complaint and/or negative experience with Live Ningaloo in writing to res@liveningaloo.com.au and agree to provide Live Ningaloo with a reasonable opportunity to make good and adequately address any issue raised in your written complaint.
- (d) If you fail to provide Live Ningaloo notice in accordance with subclause 12(a) of this Agreement, you agree that Live Ningaloo will have the right to contact the publisher of the comment without notice to you, and the authority to deal with that publisher on your behalf in relation to the removal of the comment.
- (e) Live Ningaloo agrees to make all reasonable attempts to rectify any issues raised by you in any written complaint made to it and address to Live Ningaloo at res@liveningaloo.com.

13 Offers by third-party businesses

- (a) From time to time we may partner with third parties in order to provide special discounts/offers.
- (b) The terms and conditions of each offer by a third-party business provided by is contained in Annexure B of this Agreement. However, the third-party offer may be subject to additional terms and conditions provided for by the third-party business.

14 General

- (a) The terms conditions and provisions of this Agreement which are capable of having effect after the termination of this Agreement remain in full force and effect following the termination of this Agreement.
- (b) If any provision under this Agreement is prohibited by Law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement. This severance will not in any way affect any other circumstance of or the validity or enforcement of this Agreement.



ANNEXURE A

Involvement and participation in certain activities conducted by or in association with Renlyn Australia Pty Ltd (ACN 162 736 003 t/a Live Ningaloo) can carry a significant risk of damage to property, personal injury or death.

I understand that I must exercise my own skill and judgement in regard to the risks that may be posed by undertaking such activities and to ensure that I am capable, fit and healthy enough to undertake any activity conducted by or in association with Renlyn Australia Pty Ltd – and that Renlyn Australia Pty Ltd and its directors, officers, agents and staff are not responsible for exercising such skill and judgement on your behalf.

I acknowledge that my participation in any activities conducted by or in association with Renlyn Australia Pty Ltd is at my own risk.

I further acknowledge that I will be in a National Park and that a full brief will be provided by a senior Live Ningaloo Staff member as to the environmental issues and principals of the Cape Range National Park and Ningaloo Marine Park as set out by Parks & Wildlife (PAW) on tour date.

To the fullest extent permitted at law and by reading and acknowledging the detail of this document I: waive and agree not to assert any claims or causes of action against the Renlyn Australia Pty Ltd and its directors, officers, agents and staff; and

release and indemnify on a full indemnity basis Renlyn Australia Pty Ltd and its directors, officers, agents and staff from all liability arising from my participation in any activity conducted by or in association with Renlyn Australia Pty Ltd.

I acknowledge and agree that:

any photos/video taken can be used by Renlyn Australia Pty Ltd for marketing purposes as Renlyn Australia Pty Ltd owns all rights to all photos/videos taken; and

all photos and footage taken inside the national park waters falls under the licensing agreement Renlyn Australia Pty Ltd has with Parks and Wildlife (“Licensing Agreement”). The requirement of the Licensing Agreement is that as between me and Renlyn Australia Pty Ltd, all rights to photos and footage taken, even if by me with my own equipment, will vest into Renlyn Australia Pty Ltd immediately upon creation and I hereby agree to comply with the foregoing requirements of the Licensing Agreement and to irrevocably assign all intellectual property rights in the said material to Renlyn Australia Pty Ltd.

I acknowledge and agree anything I bring aboard is my responsibility and I release Live Ningaloo (Renlyn Australia Pty Ltd) of any responsibility of loss, damage, or theft of my property.

I certify that I have read, understood and agree to be bound by:

the wording of this disclaimer; and

the Terms and Conditions applicable to the services of Renlyn Australia Pty Ltd.

By signing the following declaration you accept:

- These Terms and Conditions;
- The Booking Form; and
- Annexure A – Waiver and Release:



ANNEXURE B

