

Kalbarri QUAD BIKE SAFARIS

TERMS AND CONDITIONS
Effective 1 March 2023

1 General

- 1.1 These Terms and Conditions ("T&C") apply to the Booking made by the Customer with the Provider.
- 1.2 By making a Booking (directly or through a third party), the Customer agrees to these T&C's for themselves and for all persons included in the Booking and each such person shall be jointly and severally bound by these T&C's.

2 Definitions

"Activity" means any tour, event or attraction and any incidental activities thereto provided by the Provider.

"Authority" means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person, including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

"Booking" means booking the Activity.

"Cancellation Fee" means:

- (a) such portion of the Cost as referred to in clause 4; or
- (b) such other amount as stipulated by the Provider from time to time.

"Cost" means the total amount payable to the Provider by the Customer for the Activity.

"Customer" "You" or "Your" means the person making the Booking (and includes all persons included in the Booking).

"Deposit" means a non-refundable and non-transferrable payment made to the Provider at the time of Booking.

"Force Majeure Event" means any occurrence or non-occurrence as a direct or indirect result

of which a party is prevented from or delayed in performing any of its obligations and that is beyond the reasonable control of that party, including:

- (a) inability to obtain goods, supplies or services, including fuel, accommodation or access to an attraction;
- (b) forces of nature (including fire, earthquake, storm, flood or other casualty or accident);
- (c) war, civil strife or other violence;
- (d) industrial action, or any action or inaction by a Authority;
- (e) any law, order, proclamation, regulation, ordinance, action, demand or requirement of any Authority; and
- (f) epidemic or pandemic to the extent that restrictions (including lockdown and quarantine restrictions) are imposed by any Authority.

"Goods" means all property, equipment of any nature, facilities, chattels, fixtures and fittings, and goods of any description.

"including" is deemed to be followed by the words "without limitation".

"Provider" "We" "Us" or "Our" means E.M Nightingale & M.L Rodger t/as Kalbarri Quadbike Safaris ABN 30 734 232 042, their Representatives and assigns.

"Representatives" means the agents, directors, officers, contractors, volunteers or employees of the Provider.

"Waiver" means the Waiver, Release, Discharge and Indemnity published by the Provider and accepted by the Customer at the time of making the Booking.

3 Bookings

- 3.1 A Booking is subject to availability.
- 3.2 The Provider reserves the right to decline any Booking or requests at its absolute discretion.
- 3.3 Unless otherwise determined by the Provider prior to or at the time of Booking, the following provisions apply:
- (a) The Payment shall be paid at the time of Booking;
 - (b) full payment of the Cost is required at the time of Booking;
 - (c) a list identifying all persons participating

in the Activity is to be provided at the time of Booking;

Specials / Packages:

(d) The Provider reserves the right to promote / offer the Activity on terms and conditions different to the T&C (including as to Cost, Deposit, payment terms and Cancellation Fee) at its discretion and for each Booking therein made those terms and conditions shall prevail over the T&C with respect to any inconsistency.

3.4 A valid credit card is required at the time of Booking. Your credit card will be held as security for your Booking and utilised for any payments, outstanding charges, Cancellation Fees, no-show fees, damage and any breach of these T&C's.

3.5 Failure by the Customer to make payment as required in accordance with the T&C, or as otherwise requested by the Provider, may result in the Booking being cancelled and the Provider making available the Activity, or any part thereof, to other persons.

3.6 If the Customer makes payment by way of credit card, the Customer warrants that the information provided to the Provider is true and complete, that the Customer is authorised to use the credit card to make payment and that the Customer's payment will be honoured by the credit card issuer.

4 Cancellation

4.1 All cancellations must be in writing and sent to the Provider. It is the Customer's responsibility to ensure the Provider has received notice of any cancellation of the Booking.

4.2 Subject to these T&C's, where the Customer cancels the Booking:

(a) Three [3] or more days prior to the commencement of the Activity, a Cancellation Fee equal to [15]% of the Cost shall be deducted from any monies paid and retained by the Provider;

(b) Two days [48 hours] or less prior to the commencement of the Activity (including on the day of the Activity and no shows), all monies paid by the Customer will be forfeited.

4.3 If the Customer requests an amendment to the

Booking two days [48 hours] days or less prior to the commencement of the Activity, such request will be deemed a cancellation by the Customer and the provisions in clause 4.2(b) will apply.

4.4 Where the Booking is cancelled in accordance with clauses 4.2(b), or 4.3, the Provider shall have the right to re-book the Activity, or any part thereof.

5 Costs

5.1 Costs are in AUD and inclusive of GST.

5.2 Costs are subject to change. The Provider reserves the right to change the Cost without notice provided that the Cost will not be varied for Bookings that have been paid in full, or for which a Deposit has been paid.

6 Changes to Activity

6.1 The Customer acknowledges that the nature of the Activity is likely to require considerable flexibility. The itinerary / program provided for each Activity is representative of the types of activities contemplated. The Customer acknowledges that routes, schedules, itineraries, amenities, activities and mode of transport and other inclusions may be subject to alteration without prior notice due to local circumstances or events. As such the Provider reserves the right to:

- (a) cancel or modify any routes or any other aspect of the Activity;
- (b) substitute different or equivalent routes or aspects of the Activity; or
- (c) postpone, cancel or delay (either in relation to the departure or arrival times or the duration of the itinerary) any such aspect of the Activity if in the absolute discretion of the Provider it is necessary to do so.

6.2 In the event of any change, modification, cancellation, postponement or delay to the Activity as contemplated under this clause, the Customer acknowledges that the Customer will have no right of refund and no right to claim compensation for any loss and or cost incurred by reason of the change, modification, cancellation, postponement or delay.

7 Property in Goods

7.1 All Goods supplied by the Provider remain the property of the Provider.

- 7.2 The Customer shall not alter, change, replace or otherwise interfere with any Goods.
- 7.3 The Provider takes no responsibility for the suitability of the Goods for the Customer's specific requirements, and it is the Customer's responsibility to ensure that all Goods are suitable for the Customer's specific needs.
- 7.4 Any damage to Goods is the Customer's liability. The Customer will be responsible for any repairs required to damaged Goods.
- 7.5 The Customer shall ensure that any Goods are not damaged or destroyed and shall return all Goods in the same condition as provided, fair wear and tear excluded.
- 7.6 The Provider has the right to inspect any Goods at any time.

8 Behaviour Policy

- 8.1 Anti-social behaviour and intoxication during the Activity and or creating a disturbance to other customers and or Representatives will not be tolerated and may result in immediate termination of the Activity for the Customer.
- 8.2 Where the Activity is terminated pursuant to this clause, the Customer shall forfeit any and all monies paid to the Provider.

9 Customer's Warranties

- 9.1 The Customer warrants that:
- (a) the Customer has and will comply with all applicable laws;
 - (b) the Customer has and will comply with all lawful directions of the Provider;
 - (c) the Customer has not relied on any representations or warranties that may have been made by the Provider or its Representatives;
 - (d) the Customer acknowledges that the Activity may involve a significant amount of personal risk. The Customer hereby assumes all such risk and does hereby release the Provider from all claims and causes of action arising from any damages or injuries or death resulting from such risks; and
 - (e) the Customer will report any and all hazards immediately to the Provider.

10 Termination

- 10.1 The Provider may terminate the Booking immediately if there has been a breach of the

T&C.

- 10.2 Any termination of the Booking in accordance with this provision will result in all monies paid by the Customer to the Provider being forfeited by the Customer and retained by the Provider.
- 10.3 The accrued rights, obligations and remedies of the Provider are not affected by the termination of the T&C.

11 Waiver of Liability Agreement

- 11.1 These T&Cs express a contract between You and Us (**Agreement**).
- 11.2 The purpose of this Agreement is to exclude Our liability to the extent permissible by law to pay damages or any other form of compensation for any personal injury or death suffered by You resulting from participating in the Activity.
- 11.3 You acknowledge that the Activity involves the risk of serious injury, physical harm or death.
- 11.4 You also acknowledge that in signing this Agreement You have done so voluntarily and that no pressure or unfair tactics have been used to persuade You to sign this Agreement and that You have done so voluntarily in the knowledge that it is open to You not to sign the Agreement and for You to elect not to participate in the Activity.
- 11.5 You release and forever hold Us harmless and Our office holders, directors or officers or Our volunteer or employee who is involved with organising the Activity from and against any claims actions, suits, proceedings or liabilities of any kind in respect of any personal injury or death suffered by me.
- 11.6 You also agree to indemnify Us and Our office holders, directors or officers or Our volunteer or employee who is involved with organising the Activity against any claims actions, suits, proceedings or liabilities of any kind in respect of any personal injury or death suffered by You.
- 11.7 You also agree that Our liability for any personal injury that may result from the supply of the Services that may be suffered by You is excluded.

11.8 Parent / Guardian Declaration

In Your capacity as the parent/guardian of the child taking part in the Activity You make the above acknowledgements, releases, agreements and warranties on behalf of such child as if You were the such child and further warrant that You have told the child that the

Activity involves the risk of serious injury, physical harm or death.

12 GST

12.1 Unless otherwise stated, all amounts payable by the Customer are inclusive of GST.

12.2 The Customer agrees to pay GST in respect of any goods or services that the Provider supplies to the Customer and or are supplied to the Customer on behalf of the Provider.

13 Insurance

The Customer must obtain comprehensive travel and medical insurance including (but not limited to) cover for medical expenses, evacuation charges, trip cancellation and force majeure events.

14 Force Majeure Event

14.1 If any Force Majeure Event results in the Provider being prevented from, or delayed in, performing any of its obligations to the Customer:

- (a) then such a delay or prevention of performance shall not be deemed to be a breach of contract or these T&C's;
- (b) no loss or damage shall be claimed by the Customer from the Provider by reason thereof; and
- (c) The Provider shall use its best endeavours to minimise and reduce any period of restriction or interference occasioned by the Force Majeure Event.

14.2 In the event of a Force Majeure Event, the Provider, in its absolute discretion may:

- (a) substitute a different or equivalent Activity in place of cancelled or modified Activity;
- (b) postpone, cancel or delay (either in relation to the departure or arrival dates) any aspect of the Activity if in the absolute discretion of the Provider it is necessary to do so;
- (c) offer a transfer of the Activity, or part thereof, to an alternative date within 24 months (or such longer period as is reasonable and determined by the Provider in the circumstances), which transfer option is subject to availability;
- (d) offer a credit, to the value of any monies paid, which credit will be valid for travel within 24 months from the issue date (or such other longer period

as determined by the Provider in its absolute discretion), provided that:

- (i) any additional costs payable on the new booking will be payable by the Customer in full;
- (ii) additional costs may apply for the Activity in future seasons;
- (iii) credit terms and conditions are final;
- (iv) credits are not able to be extended beyond their expiry date; and
- (v) the credit, or any balance on a partially used credit, is not redeemable for cash.

15 Personal Information

15.1 The Customer's personal information may be used by the Provider and may be disclosed to the Provider's Representatives, agents, service providers, suppliers or other third parties for any purpose associated with the Booking. Any use or disclosure of the Customer's personal information by the Provider will be in accordance with the *Privacy Act 1988* (Cth).

15.2 The Customer acknowledges that photos or video of the Customer may be taken by the Provider or its Representatives. These images may be used in any promotional materials, website, all social media platforms (i.e. Instagram), etc., unless the Customer specifically requests in writing to the Provider to not use the Customer's image. Otherwise, the Provider is granted a perpetual, royalty-free, worldwide, irrevocable licence by the Customer to use such images for publicity and promotional purposes.

16 Severance

If any part of the T&C is wholly or partly invalid, unenforceable, illegal, void or voidable, the T&C must be construed as if that provision or part of a provision had been severed from the T&C and the parties remain bound by all of the provisions and part provisions remaining after severance.

17 Governing laws

17.1 The T&C are governed by and shall be construed in accordance with the laws of the State of Western Australia.

17.2 The parties irrevocably:

- (a) submit to the exclusive jurisdiction of the Courts of Western Australia and the Courts competent to determine

appeals from those Courts:

- (i) for determination of any dispute claim or demand; or
 - (ii) with respect to any proceedings which may be brought at any time relating to these T&C,
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum.

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