

TERMS AND CONDITIONS - attached to Booking Form**1. ACCEPTANCE**

1.1 These Terms are between Duma Safaris Pty Ltd (ABN 89 614 116 666), its successors and assignees (referred to as “we”, “us” or “our”) and you, the person, organisation or entity described in the Booking Form (referred to as “you” or “your”), and collectively the Parties. These Terms apply to all Services provided by us to you.

1.2 You have requested the Services set out in the attached Booking Form. You accept the Booking Form and these Terms by signing and returning the Booking Form.

1.3 **You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully.** Please contact us if you have any questions using the contact details at the end of these Terms. Purchasing Services from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older. You must not order or use the Services if you are under 18 years of age or do not have the consent of a legal guardian who is 18 years or older. If you do not agree to these Terms, you must not use or purchase our Services from us.

1.4 We will not commence performing the Services until you have paid the Deposit or first instalment of our Fees.

2. SERVICES

2.1 We agree to perform the Services with due care and skill.

2.2 We reserve the right to refuse any request that we deem inappropriate, unreasonable or illegal.

2.3 You acknowledge that Exclusions do not form part of the Services and we will not provide them. It is your responsibility to make separate arrangements for Exclusions, including international flights, and you acknowledge that we may not be able to provide Services to you if you have not made arrangements for Exclusions.

2.4 If we are unable to provide Services to you because you have not made arrangements for Exclusions we may cancel the Services and you will not be entitled to a refund of any Fees.

2.5 We may provide the Services to you using our employees, contractors and third party providers, and they are included in these Terms.

2.6 Third parties who are not our employees or our direct contractors will be your responsibility.

We are not responsible for the services provided by those third parties.

2.7 Third party providers may require you to sign a waiver of responsibility or liability or other similar document before they provide Services to you. If you chose not to sign any such document we may not be able to provide Services to you and you will not receive any refund of any Fees as a result.

2.8 You acknowledge that a safari experience can be affected by many factors beyond our control, including but not limited to weather and local conditions, and you acknowledge that we cannot and do not provide any form of guarantee or promise that you will see any particular animal through our Services.

2.9 If you request a Variation, we have discretion as to whether we perform this work for you and whether an adjustment to the Fee may be required in respect of the same. If we are unable to accommodate the Variation, we may request that we be paid for Services performed to date and terminate these Terms.

2.10 If we agree to perform a Variation, then we will inform you of any Variation Fee. You must pay the Variation Fee before we commence work on the Variation. We will invoice you accordingly for the Variation.

2.11 For the avoidance of doubt, requesting any changes to the participant details set out in the Booking Form constitutes a Variation and is likely to result in a Variation Fee.

2.12 We reserve the right to make changes to the Services, including camps, lodges and third party services, if we are unable to provide them as set out in the Booking Form, itinerary or elsewhere. If we make changes to Services we will make all reasonable efforts to discuss these with you.

3. PRICE, INVOICING AND PAYMENT

3.1 You agree to pay us the Price, using the Payment Method, as set out in the Booking Form including any Deposit. All amounts include Australian GST (where applicable).

3.2 The Price and Services can be varied by written agreement between us, including by email.

3.3 You agree to pay our invoices by the payment date set out on the invoice. If an invoice is unpaid after the payment date, we may cease to provide the Services to you until we receive payment of the invoice.

3.4 You agree to pay us the Price in full at least 90 days before the Departure Date. If you do not pay us the Price in full at least 90 days before the Departure Date we reserve the right not to provide the Services and may not refund any Deposit paid.

3.5 If invoices are unpaid after the payment date, we have the right to engage debt collection

services for the collection of unpaid and undisputed debts, and the right to commence legal proceedings for any outstanding amounts owed to us.

- 3.6 We reserve the right to report bad debts to independent credit data agencies.
- 3.7 Fees are an estimate only, you acknowledge that the final Fees may be more or less than the estimated amounts as a result of changes to third party costs including domestic flights, airport taxes or park fees or to exchange rates. We will endeavour to inform you of any material variation as it becomes apparent.
- 4. YOUR OBLIGATIONS AND WARRANTIES**
- 4.1 You warrant that you will not employ, canvass, solicit, entice, induce or attempt to employ any employee or contractor that was employed by or contracted to us during the time that we provided Services to you or during the 12 month period prior to that time.
- 4.2 You warrant that throughout the term of these Terms that:
- (a) there are no legal restrictions preventing you from agreeing to these Terms;
 - (b) you will cooperate with us, and provide us with information that is reasonably necessary to enable us to perform the Services, as requested by us from time to time, and comply with these requests in a timely manner;
 - (c) you will follow our safety instructions and those of our employees, contractors, agents and third party providers at all times;
 - (d) the information you provide to us is true, correct and complete;
 - (e) you will not infringe any third party rights in working with us and receiving the Services;
 - (f) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns;
 - (g) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;
 - (h) you hold travel insurance that specifically covers the countries and activities in the Services and will provide evidence of such insurance to us if we request it; and
 - (i) you consent to the use of your personal information in relation to the Services.
- 4.3 You are expected to conduct yourself in an orderly and acceptable manner and not to disrupt the enjoyment of other guests. If in our

opinion or in the opinion of any hotel manager or any other person in authority, your behaviour or that of any member of your party is causing or is likely to cause distress, danger or annoyance to any of our other guests or any third party or damage to property, or to cause a delay or diversion to transportation, we reserve the right to terminate your booking arrangements with us immediately. In the event of such termination our liability to you will cease, you will be required to leave your accommodation or other service immediately and we will have no further obligations to you.

5. PASSPORTS, VISAS AND HEALTH

- 5.1 You are responsible for arranging your own passport, visa and health requirements including vaccinations.
- 5.2 Visa requirements can and do change and we recommend that you recheck the visa requirements for your destination prior to travel. If you are not travelling on an Australian passport, a returning resident visa may be required for re-entry into Australia. It is your responsibility to obtain this. Please also note that some countries require a specific visa type for persons who have had a previous criminal conviction. If you require further information about this, please contact the relevant foreign embassy for further information.
- 5.3 Some countries require that your passport be valid for 6 months beyond the date of your intended stay in the country and you must ensure that your passport is still current for travel. Please also check that the photo page of your passport is not frayed or lifting as you may also be turned away at check-in. Furthermore, a "machine readable" passport may be required and you should contact the relevant foreign embassy for clarification.
- 5.4 The name on the airline ticket must be identical to your passport and you are responsible for ensuring that this is the case at the time that you make a booking.
- 5.5 You should see a travel doctor regarding the vaccinations required for your travel. You should also speak with the relevant foreign embassies, as some countries require that travellers be vaccinated against specific diseases.
- 5.6 The Australian Department of Foreign Affairs and Trade (DFAT) provides a travel advisory service and advises Australian travellers on security risks in a number of countries. Please contact DFAT to avail yourself of the travel advisories prior to departure. Please refer to this guide at: www.smartraveller.gov.au.
- 5.7 We do not accept any responsibility or liability if you cannot travel, or incur any other loss because you have not complied with any

- passport, visa, immigration requirements or health formalities.
- 5.8 You agree to reimburse us in relation to any fines or other losses which we incur as a result of your failure to comply with any passport, visa, immigration requirements or health formalities.
- 6. OUR INTELLECTUAL PROPERTY**
- 6.1 The Materials contain material which is owned by or licensed to us and is protected by Australian and international laws. We own the Intellectual Property rights in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.
- 6.2 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any Intellectual Property rights in our Materials, except as stated in these Terms or with our written permission.
- 6.3 Your use of our Materials does not grant you a licence, or act as a right to use any Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 6.4 You must not breach our Intellectual Property rights by, including but not limited to:
- (a) altering or modifying any of the Materials;
 - (b) creating derivative works from the Materials; or
 - (c) using our Materials for commercial purposes such as onsale to third parties.
- 7. CONFIDENTIAL INFORMATION**
- 7.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than where necessary, to third party suppliers, or as required by law); to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; only to use the Confidential Information for the purpose for which it was disclosed by you and ancillary business purposes, and not for any other purpose.
- 7.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.
- 7.3 These obligations do not apply to Confidential Information that:
- (a) is authorised to be disclosed;
 - (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
 - (c) is received from a third party, except where there has been a breach of confidence; or
 - (d) must be disclosed by law or by a regulatory authority including under subpoena.
- 7.4 This clause will survive the termination of these Terms.
- 8. FEEDBACK AND DISPUTE RESOLUTION**
- 8.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.
- 8.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them at an initial meeting.
 - (b) If the Parties cannot agree how to resolve the dispute at that initial meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 8.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 9. TERM AND TERMINATION**
- 9.1 This Agreement will begin when we sign the Booking Form and continue until the End Date, or the date on which these Terms are terminated in accordance with this clause, if earlier.
- 9.2 Either Party may terminate these Terms, if there has been a material breach of these Terms, subject to the dispute resolution procedure in these Terms.
- 9.3 If you cancel your booking more than 90 days prior to the Departure Date you acknowledge that the Deposit may not be refundable to you. If you cancel your booking later than 90 days prior to the Departure Date you acknowledge that any refund of the Price paid will be at our discretion and will depend on our being able to recover our costs by filling your place on tour.

- 9.4 If we need to cancel or vary the Services due to circumstances beyond our control you may be liable for extra costs for the new arrangements made on your behalf including, but not limited to, travel and alternative accommodation costs.
- 9.5 We may terminate these Terms immediately, at our sole discretion, if:
- we consider that a request for the Service is inappropriate, improper or unlawful;
 - you fail to provide us with clear or timely instructions to enable us to provide the Services;
 - we consider that our working relationship has broken down including a loss of confidence and trust;
 - for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe; or
 - you fail to pay an invoice within 10 Business Days of the payment date as set out in the Invoice Terms.
- 9.6 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.
- 9.7 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 9.8 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 10. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 10.1 **ACL:** If you are a consumer as defined in the ACL, the following applies to you: *You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the services remedied if they are not rendered with due care and skill or they are not fit for purpose and the failure does not amount to a major failure.*
- 10.2 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in the period set out in the Booking Form where it is affected by your delay in response, or supply of incomplete or incorrect information.
- 10.3 **Third party specialists:** We may provide you with contact details of third party specialists.
- This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or failure to advise or provide services.
- 10.4 **Warranties:** To the extent permitted by law, we exclude all express and implied warranties representations and guarantees and all material and work is provided to you without warranties, representations and guarantees of any kind, either express or implied. We expressly exclude all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 10.5 **Liability Release:** You acknowledge that travel as part of receiving the Services can be dangerous including, but not limited to, hazards from travelling by any form of vehicle, accident or illness in remote areas without access to medical facilities or evacuation, forces of nature, acts of God and civil disturbance. You further acknowledge that animal encounters can be dangerous and can cause illness and injury and in some cases death. You agree to release us and indemnify us against any Claims for all losses or damages, personal injury or death you may incur whilst receiving the Services.
- 10.6 **Liability:** To the extent permitted by law, we exclude all liability for any Claims (whether direct, indirect, incidental, special, consequential and/or incidental) for personal injury, death, loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation or any loss or damage relating to business interruption or otherwise, suffered by you or made against you, arising out of or in connection with your use of the Services, even if we were expressly advised of the likelihood of such loss or damage.
- 10.7 **Limitation:** To the extent permitted by law our total liability arising out of or in connection with the Services, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the amount that you have paid to us for the Services or the amount recovered or recoverable under our relevant insurance policies, whichever is the higher.
- 10.8 This clause will survive the termination of these Terms.

11. INDEMNITY

- 11.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- any information provided by you that is not accurate, up to date or complete or is misleading or a misrepresentation;
 - any breach of these Terms by you;
 - any misuse of the Services by you, your employees, contractors or agents; and
 - your breach of any law or third party rights.
- 11.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 11.3 This clause will survive the termination of these Terms.

12. GENERAL

- 12.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 12.2 **Publicity:** You consent to us using your personal information, including your image, to advertise our Services, including but not limited to mentioning you on our Site and in our promotional material.
- 12.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 12.4 **GST:** If and when applicable, GST payable on the Services will be set out on our invoices. By accepting these Terms, you agree to pay us an amount equivalent to the GST imposed on these charges.
- 12.5 **Relationship of parties:** These Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.
- 12.6 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written

consent of the other Party (such consent not to be unreasonably withheld).

- 12.7 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate our agreement with you by giving you 5 Business Days' notice in writing.
- 12.8 **Notices:** Any notice required or permitted to be given by either Party to the other under these Terms will be in writing addressed to the relevant address in the Booking Form. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 12.9 **Jurisdiction & Applicable Law:** These terms are governed by the laws of New South Wales and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales.
- 12.10 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.
- 13. DEFINITIONS**
- 13.1 **ACL** means the Australian Consumer Law.
- 13.2 **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales, Australia.
- 13.3 **Booking Form** means the booking form to which these Terms are attached.
- 13.4 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement or otherwise.
- 13.5 **Confidential Information** includes confidential information about you, your credit card or payment details, and the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, technology, and other information of

either Party whether or not such information is reduced to a tangible form or marked in writing as "confidential".

- 13.6 **Departure Date** is set out in the Booking Form.
- 13.7 **Deposit Required** is set out in the Booking Form.
- 13.8 **End Date** is set out in the Booking Form.
- 13.9 **Exclusions** are set out in the Booking Form.
- 13.10 **Final Balance Required** is set out in the Booking Form.
- 13.11 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 13.12 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs, any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.
- 13.13 **Materials** means work and materials that we provide to you in carrying out the Services.
- 13.14 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).
- 13.15 **Payment Method** is set out in the Booking Form.
- 13.16 **Services** means the provision of safari tours and is set out in the Booking Form.
- 13.17 **Site** means our website at www.dumasafaris.com.au.
- 13.18 **Terms** means these terms and conditions.
- 13.19 **Tour Cost** means the Fees for the Services that you have requested, including any Deposit.
- 13.20 **Variation** means amended or additional services, including but not limited to changes to the Booking Form.
- 13.21 **Variation Fee** means the additional cost for a Variation.

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