

Simon J Williams T/as Great Ocean Road Adventure Tours - GORATS
(ABN 78 436 175 202) ("GORATS")

Hire Agreement

1. These Terms of Hire set out the terms of the hire agreement including the Schedule (the "Hire Agreement") between You and GORATS.

Definitions

2. When We refer to the following terms in this document:

"ACL" means the Australian Consumer Law which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

"Consumer" means a consumer as that term is defined in the ACL.

"Consumer Guarantees" means the guarantees relating to the supply of goods and services contained in the ACL.

"Equipment" means any equipment provided by Us to You under Item 4 of the Schedule, including any associated or attached, accessories, parts and tools available for hire.

"Expected End of Hire Date" means the date that You expect the Hire Period to end. This date is set out in Item 2 of the Schedule.

"Hire Charge" or "Hire Charges" means the rates and charges payable by You for the hire of the Equipment.

"Hire Period" means the period of hire as set out in the Hire Agreement.

"We/Us/Our" means Simon J Williams T/as Great Ocean Road Adventure Tours - GORATS (ABN 78 436 175 202) and their successors and assigns.

"You/Your" refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from Us. The reference to "You/Your" includes any of your employees, agents and contractors.

Our hire commitment to you

3. We agree to hire the Equipment to You and will:
 - (a) provide the Equipment to You in good working order; and
 - (b) allow You to exclusively use the Equipment during the Hire Period.

The hire period

4. The Hire Period commences on the date specified in Item 1 of the Schedule or when You take possession of the Equipment, whichever is the earlier.
5. The Hire Period is for an indefinite term and ends when the Equipment is back in Our control or possession.

Hire Charges

6. You will pay Us for the hire of the Equipment at the Hire Charges set in Item 4 of the Schedule.

7. You will be charged for the hire of Equipment for the full Hire Period. For the avoidance of doubt, You must continue to pay the Hire Charges and other charges after the Expected End of Hire Date if You have not returned the Equipment to Us by the Expected End of Hire Date. This obligation survives termination of the Hire Agreement.
8. Hire Charges will commence from the commencement of the Hire Period and continue until the date You return the Equipment to us.

Other Charges

9. In addition to the Hire Charges, You agree to pay:
 - (a) for any consumables We supply to You;
 - (b) if You require Us to deliver and/or collect the Equipment, the cost of delivery and/or collection in Clause 6 herein;
 - (c) if You do not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment;
 - (d) any GST arising out of this Hire Agreement;
 - (e) any other applicable levies, fines, penalties and any other government charges, including Parks Victoria charges, arising out of Your use of the Equipment;
 - (f) charges for payment by EFTPOS and credit card for bank fees;

Payment

10. You must pay all Hire Charges and other fees, charges and costs that become due and payable under this Hire Agreement at the time of returning the Equipment to us.
11. If You do not pay the invoice in full by the payment due date, We may charge, in addition to any other costs recoverable under this Hire Agreement:
 - (a) interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month shall be in accordance with section 2 of the *Penalty Interest Rates Act 1983*;
 - (b) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering any unpaid amounts under this Hire Agreement.

Your Obligations

12. This Hire Agreement is personal to You and You must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Us in writing.

13. You agree that before taking delivery of the Equipment, You have satisfied Yourself as to the suitability and condition of the Equipment and You will ensure that the Equipment is used only for the purpose for which it was designed by the manufacturer. Subject to Clauses 23 and 24, We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purpose.

14. You must:

- (a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use;
- (b) ensure persons using or operating the Equipment are suitably trained on its safe and proper use;
- (c) wear suitable clothing and protective equipment when using or operating the Equipment as reasonable required or required by law;
- (d) ensure that no persons using or operating the Equipment are under the influence of drugs or alcohol;
- (e) not use the Equipment in ocean waters and must only use water-based Equipment in rivers, creeks, inland waterways, lakes and similar; and
- (f) not use the Equipment during periods of inclement weather which would unreasonably increase the risk of personal injury or Equipment damage.

15. You must:

- (a) not in any way alter, modify, tamper with, damage or repair the Equipment without Our prior written consent;
- (b) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment; and
- (c) not remove caps, bung plugs or seals from the Equipment and ensure that they are in place when You return the Equipment.

16. At all times during the Hire Period, You must store the Equipment safely and securely.

17. Whenever You are moving the Equipment, You must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. You (or any contractor You engage) must observe any safety directions advised by Us and/or the manufacturer of the Equipment to ensure its safe loading and handling.

18. You must not remove the Equipment from Victoria without Our written consent.

Ownership of the Equipment

19. You acknowledge that We own the Equipment and in all circumstances We retain title to the Equipment Your rights to use the Equipment are as a bailee only.

Responsibility for the Equipment

20. You are responsible for any loss, theft or damage to the Equipment from any and every event whatsoever and howsoever and by whosoever caused during the Hire Period except where any such loss, theft or damage was caused by Our actions.

Return of Equipment

21. You must return the Equipment to Us in the same clean condition and good working order it was in when You received it, ordinary fair wear and tear excluded. If You do not properly clean the Equipment, We will charge You a reasonable cleaning cost.

22. If We have agreed to collect the Equipment from You, You must ensure it is kept safe and secure until the time of collection.

Indemnities and exclusion of liabilities

23. Subject to Clause 24, and except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.

24. Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the statutory consumer guarantees under the ACL.

25. Subject to Clauses 23 and 24, We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that you are liable to Your customers for or any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

26. You are liable for and indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of:

- (a) personal injury;
- (b) damage to property; or
- (c) a claim by a third party,

in respect of Your hire or use of the Equipment or Your breach of the Hire Agreement. Your liability under this indemnity is diminished to the extent that Our breach of the Hire Agreement or Our negligence causes the liability, claims, damage, loss, costs or expenses.

Termination of Hire Agreement

27. We may terminate the Hire Agreement and any Hire Period for any reason without notice.

Recovery of Equipment

28. If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated under Clause 27, We may, at Your cost, take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so and You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.

Refundable Security Deposit

- 29. If requested by Us, You shall pay the Refundable Security Deposit sum in accordance with Item 3 of the Schedule as security for Your obligations and liabilities under this Hire Agreement.
- 30. The Refundable Security Deposit must be paid prior to or at the time of collecting the Equipment from Us.
- 31. Subject to Your compliance with Your obligations and liabilities herein, the Refundable Security Deposit shall be refunded to you at the time of returning the Equipment to us.

Severability

32. If any part of this Hire Agreement becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

Governing Law

33. The Hire Agreement is governed by the laws of Victoria and each party submits to the non-exclusive jurisdiction of the courts of that State in respect of any proceedings arising in connection with the Hire Agreement.

Entire Agreement

34. The Hire Agreement comprises the entire agreement between the parties. No additional terms and conditions apply to the hire of the Equipment unless the Hire Agreement is varied in writing and signed by You and Us.

No Reliance

35. Unless otherwise provided in this Hire Agreement, You acknowledge that neither We nor any person acting on Our behalf have made any representation or other inducement to You to enter into the Hire Agreement and You have not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations contained in this Hire Agreement.

School Groups

- 36. If the You are a school, You hereby declare and warrant that You have obtained a duly signed copy of Our Release and Waiver ("the Waiver") from each person that shall use the Equipment.
- 37. If Clause 36 applies, You must return the Waiver to Us prior to such person using the Equipment.
- 38. If you fail to comply with Clauses 36 and 37, You hereby release, discharge, indemnify and hold harmless Us, and/or any Agent acting on behalf of Us, from any liability, claims, demands, suits and costs whatsoever, for any discomfort, illness, injury (including permanent disability and death), property loss and/or damage arising as a direct or indirect result of such persons use of the Equipment.

Signing this Hire Agreement

39. The person signing this Hire Agreement for and on behalf of You hereby warrants that he or she has Your authority to enter into the Hire Agreement on Your behalf and is empowered to bind You to the Hire Agreement.

Hirer's Name: Hirer's Signature:

Hirer's address:

Hirer's telephone: Hirer's I.D.:

SCHEDULE

Item 1

Date of Hire:

Item 2

Expected End of Hire Date:

Item 3

Refundable Security Deposit:

Item 4

Hired Equipment:

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