

## Hamptons on the Bay - General Terms And Conditions Of Sale

These terms and conditions ("Terms") apply where the Company provides Accommodation or Products to a Customer.

### 1. GENERAL

- 1.1 These Terms apply to all bookings and Contracts for Accommodation or for the supply of Products made between the Company and the Customer and:
- (a) supersede and exclude all prior and other discussions, representations and arrangements relating to the supply of Accommodation and Products including but not limited to on-line travel agent booking terms and conditions; and
  - (b) override any quotes, invoices, accepted or modified purchase orders and the Customer's terms and conditions (if any).
- 1.2 Unless the Company otherwise agrees in writing, only these Terms shall apply to Accommodation rentals and Products supplied by the Company.
- 1.3 If there is any inconsistency between these Terms and any Special Conditions, the Special Conditions shall prevail to the extent of the inconsistency.

### 2. BOOKING PROCESS

- 2.1 The Customer may by telephone, email, facsimile or via the Company's booking website or authorised booking channels websites submit a Booking Request to the Company which must include the following information:
- (a) proposed check-in date and estimated arrival time;
  - (b) proposed check-out date;
  - (c) the requested room type;
  - (d) the number of adults/children/infants;
  - (e) guest particulars including but not limited to name, address, email address, telephone number, special requirements (if any); and
  - (f) method of payment:
    - (i) in cash or other cleared and readily accessible funds acceptable to the Company (in its sole and absolute discretion); or
    - (ii) credit card (limited to Mastercard, VISA or Amex) with sufficient available credit at the time the Booking Request is received by the Company.
- 2.2 A Booking Request constitutes an offer by the Customer to rent Accommodation as set out in the Booking Request.
- 2.3 The Company is not obliged to accept a Booking Request and may in its sole and absolute discretion accept or reject in whole or in part:
- (a) any Booking Request, including but not limited to a request that is incomplete, incorrect, contains false or misleading information or which does not include a method of payment acceptable to the Company (in its sole and absolute discretion);
  - (b) any variation or cancellation request by the Customer in respect of a Booking Request or Contract.
- 2.4 A Booking Request placed by a Customer is not binding on the Company unless the Company provides the Customer with written confirmation of the booking ("Booking Confirmation") which may contain additional conditions ("Special Conditions"). If the Customer does not object to any Special Conditions and proceeds with a booking the Customer shall be deemed to have agreed to the Special Conditions and these Terms are incorporated into the rental contract ("Contract").
- 2.5 The Customer agrees that the Company may process payment at any time after the Booking Request is made.
- 2.6 The Customer agrees that a Booking Request and the Company's Booking Confirmation occurs at the Company's Premises.
- 2.7 If the Company agrees to any variation or cancellation of a Contract, the Customer will be liable for any Loss incurred by the Company with respect to that Contract (including, without limitation, any costs incurred by the Company as at the date of such variation or cancellation in respect of the Contract).
- 2.8 The Customer acknowledges and agrees that booking channel websites are third party service providers and:
- (a) are not agents acting for or on behalf of the Company and have no authority to bind the Company; and

(b) are brokers or agents acting for and on behalf of the Customer.

### 3. LICENCE TO OCCUPY ROOM

- 3.1 If a Contract for Accommodation has been made between the Company and the Customer in accordance with these Terms, the Company grants to the Customer an exclusive, revocable, non-transferrable, licence to occupy (subject to the Usage Conditions) a room of the type specified in the Booking Confirmation/Contract on and from 2.00pm on the check-in date until 10.00am on the check-out date as specified in the Booking Confirmation/Contract.
- 3.2 The Company shall at all times have the sole and absolute discretion to allocate the use of a room to the Customer. Whilst the Company may endeavour to provide a room requested by the Customer, the Company does not guarantee the availability of specific rooms.

### 4. PRICE & PAYMENT

- 4.1 The Price for Accommodation is the price set out on the Company's Booking Confirmation/Invoice.
- 4.2 The Company may submit its Booking Confirmation/Invoice to the Customer contemporaneously with, or immediately following, the submission by the Customer of a Booking Request.
- 4.3 Time is of the essence for payment of the Company's invoices.
- 4.4 The Customer shall pay the Company's invoices at the time of making the Booking Request or if through a booking channel in accordance with the booking channel's payment terms.
- 4.5 The Customer shall pay the Price by cash, credit card (plus any bank or services charges that may be applicable), bank transfer or direct debit from the Customer's account (and the Company is hereby expressly authorised to give effect to the Customer's direct debit instructions) or direct deposit to the Company's Account.
- 4.6 Payment by cheque or other negotiable instrument is not permitted except where provided in the Special Conditions and in any case, is not regarded as received until cleared funds have been received by the Company in the Company's Account.
- 4.7 Without prejudice to any other rights or remedies of the Company, if the Customer fails to make (whether in full or in part) any payment required under these Terms on or before the due date for payment, the Customer agrees that the Company may cancel the Booking Request or Contract and the Company may exercise any rights it may have under clause 6.

### 5. CLAIMS AND LIMITATION OF LIABILITY

- 5.1 Subject to clause 5.2:
- (a) all conditions, warranties and implied terms, whether statutory or otherwise, are excluded in relation to the Accommodation and Products;
  - (b) the Customer releases the Company from any liability for legal costs and disbursements and, without limitation, any indirect or consequential expense, loss or damage, loss of profits, revenue, use, expectation or opportunity, wasted expenditure, lost production or similar losses suffered by the Customer under or in connection with the Contract.
- 5.2 The Australian Consumer Law provides Consumers with a number of consumer guarantees that cannot be excluded or limited. The remedies, exclusions and limitations of liability set out in these Terms (including under clause 5.1) are subject to, and will not apply to the extent that they are prohibited by, the Australian Consumer Law provided that the Company may limit its liability in these Terms and in the Special Conditions to the full extent and manner permitted by the Australian Consumer Law.
- 5.3 To the full extent permitted by law, the Company's liability under section 49A of the Civil Liability Act 2002 is limited as provided under that section.

### 6. TERMINATION

- 6.1 The Company may by written notice terminate the Contract if the Customer commits a default.
- 6.2 A Customer commits a default if:
- (a) it fails to pay an invoice by the due date;
  - (b) it fails to provide a method of payment acceptable to the Company (in its sole and absolute discretion) not less than 21 days prior to the check-in date;
  - (c) the method of payment proposed by the Customer is unable to be processed for any reason whatsoever (including but not limited to lack of funds, incorrect particulars, card expiration);

- (d) fails to have in place adequate travel insurance as required by clause 8.1;
- (e) the Customer:
- (i) fails to vacate the Accommodation at the designated check-out time of 10.00 am on the scheduled day of departure;
  - (ii) fails to return the Accommodation to the Company in substantially the same state as presented at the time of check-in (fair wear and tear excepted). For example, including but not limited to, leaving the cooking facilities, pots and pans, crockery and cutlery in an unwashed condition or which require substantial scrubbing and cleaning; leaving, in the Company's reasonable opinion, the Accommodation in a dirty messy or unclean state;
  - (iii) smokes inside any of the Accommodation or in such a manner as to allow smoke to enter into the Accommodation;
- (f) it fails to occupy the Accommodation on the dates and within the times specified in the Contract;
- (g) it:
- (i) breaches these Terms in a material respect and the breach:
    - A is incapable of remedy;
    - B is capable of remedy, and the Customer has failed within a reasonable time to remedy such breach after the Company has given the Customer notice of the breach; or
  - (ii) suffers an Insolvency Event.
- 6.3 The Customer may terminate a Booking Request or a Contract:
- (a) if the Company:
- (i) breaches these Terms in a material respect and the breach:
    - A is incapable of remedy; or
    - B is capable of remedy, and the Company has failed within a reasonable time to remedy such breach after the Customer has given the Company written notice of the breach; or
  - (ii) suffers an Insolvency Event; or
- (b) by giving written notice of termination received by the Company:
- (i) in the case of Cabins, not less than 7 days prior to 00h:00m:01s am on the check-in date provided that:
    - A if notice is received prior to the time specified, the Price shall be returned to the Customer less any bank or service fees;
    - B if notice is not received prior to the time specified, the Price shall be forfeited in full or if not yet received shall be paid by the Customer and the Company shall be entitled to charge the full amount of the Price;
  - (ii) in the case of House, not less than 30 days prior to 00h:00m:01s am on the check-in date provided that:
    - A if notice is received prior to the time specified, the Price shall be returned to the Customer less any bank or service fees;
    - B if notice is not received prior to the time specified, the Price shall be forfeited in full or if not yet received shall be paid by the Customer and the Company shall be entitled to charge the full amount of the Price.
- 6.4 The Customer must forthwith after termination of a Contract in accordance with this clause 6 pay the Company all amounts it owes the Company, whether due at that time or not.
- 6.5 Termination of a Booking Request or a Contract does not affect a party's accrued rights and remedies, which remain unaffected.
- 6.6 Without limiting any other remedy available to the Company, in the case of default under:
- (a) clauses 6.2(e)(i) and 6.2(e)(ii), the Customer shall pay a late check-out fee or a cleaning fee:
- (i) in the case of Cabins, of \$50.00 inc of gst;
  - (ii) in the case of the House, of \$250.00 inc of gst;
- (b) clause 6.2(e)(iii) a cleaning fee:
- (i) in the case of Cabins, of \$200.00 inc of gst;
  - (ii) in the case of the House, of \$400.00 inc of gst,

and the Customer authorises the Company to charge these fees against the credit card provided at the time of booking or in such other manner as the Company may reasonably demand.

## 7. FORCE MAJEURE

- 7.1 The Company is not liable for any failure to perform any of its obligations under these Terms as a result of any event beyond its reasonable control including, without limitation, where the Company is prevented or hindered from supplying the Accommodation or Products as a result of any strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, products, equipment, facilities or services from usual suppliers on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network. In such circumstances, the Company may by notice in writing suspend performance of any obligations under these Terms while the event continues and the Company shall not incur any liability to the Customer in respect of such suspension.
- 7.2 If any of the events of force majeure continues for more than 30 days, the Company may, without liability, terminate any affected purchase order and/or the Contract by giving notice in writing to the Customer.

## 8. INSURANCE AND INDEMNITY

- 8.1 The Customer represents and warrants that the Customer shall have in place prior to arrival and for the duration of the Customer's stay at the Company's Premises travel insurance in respect of the Customer's travel arrangements (including the costs of the Accommodation) and all of the Customer's property and belongings that it may bring onto the Company's Premises in an amount that is sufficient to fully indemnify the Customer for any loss or damage howsoever caused which the Customer may incur.
- 8.2 The Customer indemnifies the Company and its Representatives and Related Bodies Corporate against any Loss which the Company suffers, incurs or is liable for in connection with the Contract including, but not limited to:
- (a) any act or omission of the Customer or the Representatives of the Customer;
  - (b) any breach of the Contract by the Customer.

## 9. PRIVACY ACT 1988

- 9.1 The Customer agrees and hereby consents to:
- (a) the Company obtaining from a credit-reporting body a credit report containing personal credit information about the Customer in relation to credit provided by the Company;
  - (b) exchanging information about the Customer with those credit providers named in the relevant Credit Application account or named in a consumer credit report issued by a credit reporting body for the following purposes:
    - (i) to assess an application by the Customer;
    - (ii) to notify other credit providers of a default by the Customer;
    - (iii) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and
    - (iv) to assess the credit worthiness of the Customer.
  - (c) the Company being given or providing a consumer credit report to collect overdue payment on commercial credit;
  - (d) the Company retaining and using personal information provided by the Customer for the following purposes and such other purposes as agreed from time to time or as required by law:
    - (i) the provision of goods and services;
    - (ii) the marketing of goods or services by the Company, its agents or distributors in relation to the Company's goods and services;
    - (iii) analysing, verifying or checking the Customer's credit, payment and status in relation to provision of goods and services;
    - (iv) processing of any payment instructions, direct debit facilities and credit facilities requested by the Customer; and
    - (v) enabling the daily operation of the Customer's account and the collection of amounts outstanding in the Customer's account in relation to the Products.
  - (e) the Company disclosing information about the Customer to a credit reporting body for the following purposes:
    - (i) to obtain a consumer credit report about the Customer; and

- (ii) to allow the credit reporting body to create or maintain a credit information file containing information about the Customer.

## 10. GST AND OTHER TAXES AND DUTIES

10.1 Notwithstanding any other clause in these Terms or a Contract, to the extent that any supply made under or in connection with the Contract is a taxable supply (as defined by the GST Law), the Customer must pay to the Company, in addition to the Price (exclusive of GST) an amount equal to the Price (exclusive of GST) multiplied by the rate at which GST is imposed in respect of the supply (i.e. the GST). The Customer must pay to the Company the GST at the same time as the Price provided that the Company shall issue the Customer a tax invoice at or before the time for payment. The Customer is responsible for paying any other duties, taxes or charges, including any stamp duty (if applicable), in relation to the Products.

## 11. SEVERANCE

11.1 If any provision of the Contract or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision or part of it shall:

- (a) so far as possible, be read down in such manner and to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable;
- (b) if it cannot be so read down, be deemed to be void and severable, and the remaining provisions of the Contract shall not in any way be affected or impaired.

## 12. VARIATION AND ASSIGNMENT

12.1 The Contract may be varied by agreement between the parties in writing only. The Customer may not assign its rights under the Contract without the Company's prior written consent.

## 13. GOVERNING LAW

13.1 These Terms and Contracts shall be governed by the laws of Tasmania and the parties submit to the non-exclusive jurisdiction of the courts of Tasmania and courts having jurisdiction to hear appeals therefrom.

## 14. WAIVER

14.1 A provision of, or a right, discretion or authority created under, these Terms may not be:

- (a) waived except in writing signed by the party granting the waiver; and
- (b) varied except in writing signed by the parties.

14.2 A failure or delay in exercise, or partial exercise, of a power, right, authority, discretion or remedy arising from a breach of, or default does not constitute in a waiver of that right, power, authority, discretion or remedy

14.3 Any waiver by either party of a breach does not constitute a waiver of any subsequent breach of the same or any other provision.

## 15. RIGHT TO OFFSET

15.1 The Company may set off from any amounts it owes to the Customer any amounts the Customer owes to the Company. The Customer shall not set off any amounts due to it against any amounts payable by the Customer to the Company.

## 16. BENEFIT OF CONTRACT

16.1 The Company holds the benefit of the Contract for itself and on trust for each of its Representatives and any Related Bodies Corporate.

## 17. DEFINITIONS

17.1 In these Terms:

- (a) **Accommodation** includes the House and/or Cabins;
- (b) **Australian Consumer Law** means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and any other equivalent legislation (such as the Fair Trading Acts (or equivalent legislation) in each State and Territory);
- (c) **Cabins** means any one or more of the accommodation units designated by the Company as a cabin in the Company's sole discretion from time to time located at the Company's Premises;
- (d) **Cancelled or Cancellation** means a cancellation in accordance with clause 6.3(b);
- (e) **Company** means the Poghini Pty Ltd as trustee for the Belles Beach Unit Trust trading as Hamptons on the Bay ABN 15 926 378 171;

- (f) **Company's Account** means the bank account details set out on its Invoice or such other account as the Company may give notice in writing;
- (g) **Company's Premises** means 12164 Tasman Highway, Rocky Hills Tasmania 7190;
- (h) **Consequential Loss** means any loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity or special losses or any other loss or damage which is indirect or consequential;
- (i) **Consumer** has the meaning given to it in section 3 of the Australian Consumer Law;
- (j) **Contract** means a contract between the Customer and the Company from time to time consisting of the Customer's Booking Request, these Terms, Booking Confirmation and all accepted Booking Requests;
- (k) **Customer** means the person or entity seeking Accommodation or purchasing the Company's Products.
- (l) **Booking Confirmation** has the meaning given to it in clause 2.4;
- (m) **Booking Request** means any a booking for Accommodation placed in accordance with clause 2.1;
- (n) **House** means any one or more of the accommodation units designated by the Company as a House in the Company's sole discretion from time to time located at the Company's Premises;
- (o) **Products** mean all products supplied by the Company to the Customer;
- (p) **Price** means the price for the supply of the Accommodation or Products as provided for in clause 4;
- (q) **Related Body Corporate** has the meaning given to that term in the Corporations Act 2001 (Cth);
- (r) **Representative** means directors, officers, employees, agents, representatives, contractors or subcontractors of the relevant party; and
- (s) **Special Conditions** means any conditions included by the Company in the Booking Confirmation which apply in respect of the Accommodation or supply of Products;
- (t) **Usage Conditions** means the conditions set out in the Schedule.

### Schedule

17.1 The room Usage Conditions are as follows:

- (a) Check-in and check-out:
  - (i) Check-in is 2:00pm;
  - (ii) Check-out is 10:00am;
  - (iii) Special provision for late check-out or early check-in may be available on arrangement with our Manager, but is not guaranteed.
- (b) Occupancy Policy
  - (i) Maximum 2 persons in 1 bedroom Cabins (plus 1 in cabins 6 and 7, except where a foldaway bed is requested and provided);
  - (ii) Maximum 4 persons in 2 bedroom Cabin (cabin 5);
  - (iii) Maximum 6 persons in the House;
  - (iv) Unfortunately there is no special provision for disabled access;
  - (v) Whilst children are welcome, the property is in a rural coastal cliff top setting with open dams, water sources and coastal waters. The House also has an exposed wood heater. Children must be accompanied by an adult at all times whilst they are on the property;
  - (vi) A high-chair and cot can be provided on request (linen not included);
  - (vii) All adult linen is provided;
  - (viii) House bookings - a refundable security bond of \$900 is required not less than 48 hours prior to 00h:00m:01s am on the check-in date. This will be debited from your account and subject to there being no damage, will be credited to your account within 7 days after check-out. Cabins - no security bond required;

- (ix) All accommodation has a NO SMOKING policy. A charge of \$200/400 (Cabins/House) will be debited from your account to cover cleaning costs if guests smoke. Smoking is only permitted in outdoor areas;
- (x) No pets permitted;
- (xi) Cancellations: 1 and 2 Bedroom Cabins - If cancelled or modified up to 7 days before date of arrival no fee will be charged. If cancelled or modified later or in case of no-show, the total price of the reservation will be charged; 3 Bedroom House - If cancelled or modified up to 30 days before date of arrival no fee will be charged. If cancelled or modified later or in case of no-show, the total price of the reservation will be charged;
- (xii) All rates are quoted in Australian dollars and include GST;
- (xiii) Guests are responsible for looking after the property, leaving it in good order and in a clean condition and substantially in the same condition as presented at the time of the Customer check-in;
- (xiv) Guests also undertake to pay for damages, breakages or losses they may be responsible for during the period of their stay. Any damage or breakage must be reported to the on-site manager;
- (xv) The Cabins and the House are for use as short term holiday accommodation and are not for use as function venues, for example, a wedding or party. Guest should only allow occupation in accordance with the maximum numbers specified in the booking.
- (xvi) Without limiting any other right under the Contract, the Company reserves the right to reclaim the hired property if the hirer allows the maximum numbers of guests specified in the booking to be exceeded or if the hirer, members of the guest party or guest visitors cause disruption or damage or if in the Company's reasonable opinion, the property is left in a messy or dirty condition.