

Ability Adventures 2024 Limited - Terms and Conditions

1. **Definitions:** In these terms (**Terms**):
 - (a) **Activity** means an activity included within the Trip, including, without limitation, a tour, excursion, accommodation booking or travel booking.
 - (b) **Business Day** means a day that is not a Saturday, Sunday or a public holiday in Tauranga, Bay of Plenty, New Zealand.
 - (c) **CGA** has the meaning set out in clause 13.
 - (d) **GST** means goods and services tax pursuant to the Goods and Services Tax Act 1985.
 - (e) **Inbound Travel Operator** means an entity that arranges, coordinates and books travel products on a client's behalf including, without limitation, transportation, accommodation, specialised equipment, vehicles, excursions and attractions.
 - (f) **Service** means the service we provide to you as an Inbound Travel Operator.
 - (g) **Third Party Provider** means an Activity service provider.
 - (h) **Trip** means the personalised travel itinerary that we provide you with via our Service which includes the Activities.
 - (i) **we, us, our** means Ability Adventures 2024 Limited.
 - (j) **you, your** means the customer and, where this is more than one person/party, each such person/party jointly and severally.

2. **Interpretation:** In these Terms, unless the context requires otherwise:
 - (a) the **headings** to clauses are inserted for convenience only and shall be ignored in interpreting these Terms;
 - (b) the word **including** and other similar words do not imply any limitation;
 - (c) a **person** includes any company or body of persons (incorporated or not);
 - (d) reference to a **party** includes that party's successors and permitted assigns;
 - (e) the **plural** includes the **singular** and vice versa; and
 - (f) a reference to a **statute** includes any subordinate legislation made under it and amendments to or replacement of any of them from time to time.

3. **Application of Terms:** You accept these Terms by making a booking through us. These Terms prevail over any other terms and conditions, except specific terms agreed by the parties in writing which shall prevail over these Terms to the extent of any inconsistency or conflict.

4. **Third Party Providers:** You expressly authorise us to make Activity bookings on your behalf and to enter into, as your agent, booking agreements with Third Party Providers (as applicable). All bookings are made on your behalf and are subject to the terms and conditions, including conditions of carriage and limitations of liability, imposed by the relevant Third Party Provider, copies of which will be made available to you at your request.

5. **Quotes and bookings:** All quotes given by us:
 - (a) Are not an offer by us. A contract on these Terms is only concluded pursuant to a quote if you make a booking before the quote expires and we accept that booking by confirmation in writing (which may be by e-mail).
 - (b) Are generally valid for 20 Business Days after the date of the quote (or such other period if specified in the quote) and may be updated or amended by us on expiry.
 - (c) May include any agreed specific terms, and if a booking is accepted by us then those specific terms shall form part of your contract with us and prevail over these Terms to the extent of any inconsistency or conflict.
 - (d) Are based on the associated costs of the Activities as at the date of the quote, and may be updated at any time. Price increases may occur for a variety of reasons outside of our control. If the price increases after a booking has been made and accepted, we reserve the right to charge you (and you will pay) the difference in the price by giving you 30 days written notice.
 - (e) All prices are quoted in New Zealand Dollars (NZD) and include GST (if any).

6. **Cancellations and variations:** Once a booking has been accepted by us, that booking may not be cancelled or varied by you without our prior written approval. We may impose additional terms as a condition of approving any cancellation or variation requested by you, including, without limitation, the following fees:
 - (a) Any variation to the Trip will incur a fee of \$300.00, unless such variations involve additional Activities.
 - (b) The cost of any such variation including, without limitation, in regard to any additional Activities and/or re-issued travel documents.
 - (c) Where a booking is cancelled within 30-59 days before the Trip commences, a fee equivalent to 50% of the total cost.
 - (d) Where a booking is cancelled within 15-29 days before the Trip commences, a fee equivalent to 75% of the total cost.
 - (e) Where a booking is cancelled within 0-14 days before the Trip commences, a fee equivalent to 100% of the total cost.
 - (f) The cost of any fee imposed on us by a Third Party Provider.
 - (g) Any other fee/charge that we consider reasonable in our absolute discretion.
7. **Design Fee:** In consideration of the time, expertise and attention to specific abilities and needs that we apply in providing the Trip and Service, a non-refundable design fee of \$500.00 (**Design Fee**) shall be due and payable by you whether you proceed with the booking or not. Should you go on to accept the quote, the Design Fee will be deducted from the total price.
8. **Payment:** Unless otherwise agreed in writing (including in an applicable quote):
 - (a) A non-refundable deposit (**Deposit**) shall become due and payable immediately upon a booking being accepted by us. Unless we have agreed otherwise with you in writing (including in a quote) the Deposit shall be 20% of the total amount of the Trip (including GST (if any)).
 - (b) The cost of pre or instance purchase Activities (such as, for example, airfares) (**Pre-paid Activities**) may be payable in advance and become due and payable at the same time as the Deposit. This will be specified in the quote.
 - (c) The remaining amount payable to us (being the total price, including GST, less the Design Fee, Deposit and any Pre-paid Activities (as applicable)) shall be payable by you no later than 60 days before the Trip commences. All payments by you shall be made to our nominated account without any deduction, withholding or set off.
 - (d) Where the balance is not paid within 15 days before the Trip commences, we shall be entitled to treat the Trip as cancelled and levy the appropriate cancellation charges in accordance with clause 6 above. No reminders will be sent.
 - (e) All prices include bank and credit card charges and fees.
9. **Refunds:** Subject always to clause 13 (CGA), no refund will be available for any part of the Trip and/or Service, except to the extent that an Activity is unavailable due to adverse weather conditions or as otherwise notified to us by the relevant Third Party Provider (if any). In such circumstances, any refund will only be available once we receive the applicable refund from the Third Party Provider. All refunds will be returned to you in the same manner that the initial booking was made. Where practical, we will use reasonable endeavours to make alternative arrangements at your request. We reserve the right to alter or modify the Trip as necessary due to circumstances in which we have no control. We shall not be liable for any injury, damage, loss, delay or additional expenses incurred directly or indirectly due to an event which is beyond our control.
10. **Warranty for Activities:** For any Activity that is provided by a Third Party Provider, the Third Party Provider's warranty applies and we make no warranties in respect of that Activity. If the benefit of the relevant Third Party Provider's warranty is not able to be enforced by you directly, we will use reasonable endeavours to enforce it on your behalf and pass through the benefit of the warranty to you. We are not liable to you in any way for any loss arising from or in connection with the failure of any Activity provided by a Third Party Provider.
11. **Warranty for Service:** We warrant that our Service will be provided with reasonable care, skill and diligence, fit for your specific requirements as notified to us by you, and completed within a reasonable time. Clauses 10, 12, 13, 14, 16, 17 and 19 prevail over this clause to the extent of any inconsistency.
12. **No other warranties:** To the maximum extent permitted by law, all warranties implied by customary practice, statute or at law are excluded and you agree that, in accepting these Terms, you have relied entirely on your own enquiries, knowledge, skill and judgement.
13. **Consumer Guarantees Act:** If you are a consumer as defined in the Consumer Guarantees Act 1993 (**CGA**), nothing in these Terms shall limit or exclude any rights or remedies you have under the CGA. Where the Trip and/or Service is provided for your business purposes, you agree that the CGA shall not apply.

14. **Customer obligations and acknowledgements:** You agree that:
- (a) You have chosen the Trip and Service using your own judgement.
 - (b) We are not legally responsible for any loss or damage you might suffer in relation to the Trip and/or Service.
 - (c) We will rely on information provided by you in relation to the Trip and/or Service, and any costs incurred by us in reliance on incorrect or inadequate information may result in additional costs being charged to you.
 - (d) You (and any other persons included in your booking) are sufficiently fit and able to undertake the Activities and you agree to indemnify us for any actions, claims, demands or similar arising out of any health issues arising on or after completion of the Activities.
 - (e) You (and any other persons included in your booking) are aware of any and all health requirements of your travel destination(s) and carry all necessary vaccination or documentation (as applicable).
 - (f) If the Trip includes international travel, including into New Zealand, you (and any other persons included in your booking) hold a valid passport with at least 6 months validity from the scheduled date of return and the appropriate visa and re-entry permits (as applicable) which meet the requirements of immigration and other government authorities and you agree to indemnify us for any actions, claims, demands or similar arising as a result of such documents not meeting the requirements of those authorities.
 - (g) All mobility and/or personal care equipment hired by you for all or part of the duration of the Trip will be returned in the same condition as when it was received by you. You take full responsibility for the correct and safe use of such equipment, its care, security and agree to indemnify us for any loss or damage to such equipment.
 - (h) Where the Trip includes any self-drive tours, you shall be responsible for all costs incurred, except for those costs as set out in the quote (for example, the costs of the rental vehicle portion and the collision damage waiver fee).
15. **Travel documentation:** Travel documentation including, without limitation, airline tickets, accommodation vouchers, vehicle rental vouchers, equipment rental vouchers, excursion vouchers or any other documents, in electronic form or otherwise, are used to confirm a booking with a Third Party Provider and may be subject to certain conditions and/or restrictions including, without limitation, being non-refundable, non-changeable and subject to cancellation and/or variation fees. Any incorrect names on any such booking may result in an inability to use that booking and the booking being cancelled. All airline tickets must be issued in the name of that person's passport and/or photo identification. We will provide you with copies of all such travel documentation following confirmation of the booking. It is your responsibility to review and immediately advise us of any errors in names, dates or other applicable information as soon as reasonably practicable and, except for reason of our fault or negligence, we will not be liable for your failure to notify us of any inaccuracies in the documentation within 15 Business Days of us providing the documentation to you.
16. **Insurance:** It is your responsibility to take out appropriate insurances (including travel insurance) to cover the Activities and in respect of the Trip. Such insurance should cover cancellation, medical and repatriation expenses, personal injury and accident (to the extent that the Accident Compensation Act 2001 does not apply), death, loss of personal baggage and public liability insurance. We may request a copy of your insurance policies prior to your travel and, if you chose to not take out appropriate travel insurance, we may request that you sign an insurance waiver form agreeing to indemnify us in respect of the same.
17. **Force majeure:** We shall not be liable for any act, omission or failure to fulfil our obligations that arises from any cause beyond our control. For as long as such circumstances continue, we may, at our sole discretion, delay or suspend performance of or terminate the Trip until such time as the circumstances have ceased. You will be liable for that part of the Service provided (if any) up to the date performance ceases.
18. **Default:** We may immediately terminate the Trip by notice to you in writing where you breach any provision of these Terms and fail to remedy that breach within 7 Business Days of notice from us. Where a Trip is terminated pursuant to this clause, we shall be entitled to retain all moneys received from you and are under no obligation to provide any further Activities and/or Service to you. You will be liable for all of the Trip and/or Service provided (if any) up to the date of termination.
19. **Liability:** Our liability for the Trip and/or Service or for any cost, loss, damage, injury or claim arising directly or indirectly in relation to the provision of the Trip and/or Service supplied by us, whether arising from contract, tort (including negligence) or otherwise, shall be limited to (at our option), re-performing the Service, or providing you with a refund of the price paid for the affected Activities and/or Service. Without limiting anything else in these Terms, we are not responsible for any costs, losses, liability or claims that results wholly or partly from the provision of the Trip and/or Service, the acts or omissions of any other person including, without limitation, a Third Party Provider, or any other cause beyond our control. We are not responsible in any circumstances for any indirect, consequential or special loss, loss of profits or economic loss. Our liability at all times shall be limited to the amount of the total price paid by you for the Trip and/or Service. This clause is subject always to clause 13 (CGA).

20. **Intellectual property:** You agree and acknowledge that we are the exclusive owner or licensee of any intellectual property in the Trip and/or Service and any new intellectual property that we create in performing these Terms vests in us automatically when they are created. For the avoidance of doubt, no intellectual property rights relating to the Trip and/or Service shall vest in you at any time.
21. **Assignment:** You are not permitted to assign your obligations under these Terms to any person without our prior written consent.
22. **Entire agreement:** These Terms (plus any special terms in an applicable quote) constitute the entire agreement between the parties about the provision of the Trip and Service, and supersedes all prior agreements, undertakings, representations and negotiations.
23. **Severability:** If any clause of these Terms is found by any court of law to be invalid or otherwise not binding on the parties, or if the parties between themselves agree that one or more clauses are no longer to have effect, the rest of the clauses of these Terms shall continue in full force and effect.
24. **Governing law:** This agreement is governed by New Zealand law. The parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand Courts.