

## Terms and Conditions Agreement Across Australia Travel

ABN 99 673 065 293 Travel Agents License 2TA07468

### IMPORTANT

These terms and conditions contain important information, are legally binding, and set out the terms and conditions of the service We provide.

#### 1. DEFINITIONS

In these terms and conditions:

**Act Amendments** mean amendments to the unfair contract terms (UCT) regime under the Australian Consumer Law ('ACL') and the *Australian Securities and Investments Commission Act 2001* (Cth) ('ASIC Act').

**Agreement** means this Terms and Condition Agreement.

**Breach** means the conditions of breach contained in clause 10 of this Agreement.

**Business Day** means any day except a bank or public holiday in the State or a Saturday or a Sunday.

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or right of action.

**Completion** means the Services have been fully performed, rendered or provided by Us to You to the best of Our ability or where You no longer wish to proceed with the Services for reasons other than a breach of this Agreement.

**Confidential Information** means the following:

- (a) any information in the form of visual, oral, documentary, electronic, tangible, intangible or any other form, relating to Us or any Related Entity of Ours;
- (b) all trade secrets, strategy, ideas, concepts, inventions, business know-how, data, correspondence, material, and information relating to the commercial, financial, legal, business, intellectual property, technology, operations, products, markets, procedures, pitches, tenders, information memorandums, techniques, technology, forecasts or other affairs and transactions;
- (c) any information that is obtained by Us through the Services provided to You and forms parts of the Services. Any reference to Confidential Information in this Agreement shall include Personal Information.
- (d) all databases including its data and all contact information by You, associates, contractors, employees, suppliers, related third parties and the details of the negotiations engaged in business with You;
- (e) any and all potential transactions, books, records, financial and technical analysis or results, lead lists and clientele;

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- (f) all business affairs, sales, marketing, promotional information which is not in the public domain;
- (g) any other information that is identified as being of a confidential or proprietary nature;
- (h) all material information that is supplied and designated as confidential by Us;
- (i) all material information that is supplied by You; and
- (j) all information and negotiations in relation to the terms of this Agreement;

but excluding information:

- (a) which is already part of the public domain;
- (b) which You can prove was already known, or available on a non-confidential basis;
- (c) which You acquire from a source, other than Us, who is entitled to disclose it; and
- (d) the parties agree in writing that the information is not confidential.

**Cost** means a cost, charge, expense, outgoing, payment, fees and other expenditure of any nature.

**Deposit** means the conditions outlined in clause 5 of this Agreement.

**Goods and Services Tax** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property** means:

- (a) all databases including its data and all contact information by You, associates, contractors, employees, suppliers or related third parties engaged in business

- with Us or any other personally identifiable information;
- (b) any systems, processes or industry know-how that is created by Us and You;
- (c) any information, material, Confidential Information that is either created, produced or developed by Us or any related associate of Ours in the course of or as a result of Us providing the Services within this Agreement; and
- (d) any other information that is identified as being of a confidential or proprietary nature.

**Insolvent** means:

- (a) for a corporation:
  - (i) being wound up or entering into provisional liquidation;
  - (ii) having an administrator appointed or entering into a composition or arrangement with its creditors;
  - (iii) being subject to a scheme of arrangement; or
  - (iv) having a receiver or a receiver and manager appointed to any of the corporation's property.
- (b) for a natural person to:
  - (i) stop payment to that person's creditors; or
  - (ii) enter into any deed of arrangement for the benefit of that person's creditors; or
  - (iii) become bankrupt or commit an act of bankruptcy or bring his/her estate within the operation of any law relating to bankruptcy.

**Material** means any of the following:

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- (a) Your data plans, instructions, documents, briefs, advice, accounts, drawings, material, note, recording, memorandum, report, summary, photocopy, scanned copy or any other form by which information may be stored or reproduced (including any electronic form); and
- (b) any material supplied by You to Us for the purposes of Us providing the Services.

**Notice** means any communication or notice by one party to the other party under the terms of this Agreement.

**OAIC** means the Office of the Australian Information Commissioner  
<https://www.oaic.gov.au>.

**Personally Identifiable Information or Personal Information** means the definition as contained in section 6(1) of the Privacy Act 1988 (Cth). The Privacy Act 1988 (Cth) defines personal information as information or an opinion about an identified individual, or an individual who is reasonably identifiable.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Related Entity** means the definition as set out in the *Corporations Act 2001* (Cth).

**Responsibilities** means all responsibilities, obligations and liabilities undertaken or incurred by, or devolving upon, the parties under or in respect of this Agreement.

**Insurance** means each of the insurances, if any, described in clause 6.

**Service** and **Services** means the services We provide being the services set out in clause 3.

**Taxes** means current or future tax, fee levy, duty, charge, withholding, penalties, fines, imposts, or interest levied by a governing body, which includes the following but is not limited to taxes in relations to sales, usage, property, value-added, goods and services, turnover, stamp duties, interest equalization, business or occupational activities, excise duties, as well as taxes on income, profits, or earnings.

**Term** means the time commencing from the Commencement Date of this Agreement and expiring on Completion of this Agreement or early termination of this Agreement.

**Termination** means where one party terminates due to a breach of this Agreement or by mutual termination at the discretion of both parties.

**Letter of Offer** means the letter We provide to You which sets out the quote details of the intended tour, including general itinerary, payments, travel dates and pricing.

**Our, Ours, Us** and **We** means Milne Foods Pty Ltd ACN 673 065 293 trading as Across Australia Travel ABN 99 673 065 293.

**You, Your** and **Yours** means the school or other institution or entity which We are contracting with to provide the Service, and which is named in Our Letter of Offer.

## 2. ACKNOWLEDGMENT & AGREEMENT

### 2.1. Acknowledgment

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You acknowledge that:

- (a) You have read and understood these terms and conditions;
- (b) You understand that these terms and conditions are legally binding between You and Us in respect of the Services;
- (c) You hereby acknowledge and agree that You are bound by the terms and conditions of this Agreement and Our Letter of Offer upon payment of the invoice.
- (d) You understand that We are contracting with You for the provision of the Services, and not with individual attendees;
  - i. these terms and conditions constitute the entire Agreement between Us and You, and replace any and all prior discussions in relation to the Services, including any and all undertakings, agreements, representations, warranties and indemnities in relation to the subject matter; and
  - ii. these terms and conditions are incorporated in and form part of Our Letter of Offer.

### 2.2. Agreement

- (a) By signing or otherwise accepting Our Letter of Offer, You agree to be bound by these terms and conditions.
- (b) You will be deemed to have accepted the Letter of Offer and the terms and conditions of this Agreement if You pay any Deposit or fees due under this Agreement and Our Letter of Offer.

### 3. SERVICES

#### 3.1. Service inclusions

Our Services include, but are not limited to:

- (e) corresponding with You in determining suitability of tours, and collecting information for the preparation of tours;
- (f) arranging and planning tours, including the preparation of itineraries; and
- (g) corresponding with and briefing third parties (such as transport companies) in facilitating the tours.

#### 3.2. Service exclusions

Our Services do not include:

- (a) attending, supervising or conducting tours;
- (b) preparing meals;
- (c) overseeing tour activities; nor
- (d) investigating third parties providing Services for the tour, obtaining any evidence in relation to their insurances, procedures and ability to legally provide their Services.

### 4. CHARGES

All charges are subject to availability and can be withdrawn or varied without notice to You. We operate as a packaged tour company and therefore We do not provide a breakdown of Your proposed tour costs. We will provide the total cost and GST component for Your accounting purposes. These charges may vary due to factors beyond Our control, such as travel inflation, flight availability and the terms and conditions of any third-party providers.

### 5. PAYMENT AND DEPOSIT

#### 5.1. Our Deposit

- (a) You must pay Us an upfront non-refundable Deposit for Our Services.
- (b) This Deposit must be paid when You accept these terms and conditions.

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- (c) The Deposit is calculated on a per attendee basis, and will be determined by reference to the tour and anticipated travel requirements. For example, tours including international travel will attract a higher Deposit amount.
  - i. If the tour includes international travel, two separate deposits will be required: one for flights and one for accommodation. These Deposits will be invoiced separately according to the number of attendees.
- (d) The Deposit amount will be set out in Our Letter of Offer.

### 5.2. Accommodation Deposit

- (a) You must pay to Us a Deposit on account of accommodation.
- (b) This Deposit is due the earlier of four (4) weeks from the date of booking or the date stipulated in Our Letter of Offer.
- (c) Whether or not the Deposit payable under this clause 5.2 is refundable, shall be determined by whether the accommodation provider or third party travel provider offers refunds. Please be advised that this is outside of Our control and You are advised to read any third party terms and conditions: [\[insert hyperlink of third party terms and conditions\]](#).

### 5.3. Travel Deposit

- (a) If We are required to book travel arrangements, including flights, accommodation, tours or any other part of the tour for You, a Deposit will be required within the earlier of two (2)

weeks or the date stipulated in our Letter of Offer.

- (b) Failure to pay this Deposit within the period specified may result in any one or more of:
  - (i) cancellation of Your booking;
  - (ii) re-booking of Your booking;
  - (iii) re-quoting for Your booking.

### 5.4. Payment of balance

- (a) You must pay to Us the balance of any amounts in full no later than:
  - (i) the date stipulated in any Letter of Offer;
  - (ii) any invoice for payment We send to You; or
  - (iii) the dates stipulated in clauses 5.4(b) and 5.4(c).
- (b) If domestic flights are booked, full payment is required eight (8) weeks prior to the intended departure date.
- (c) If international flights are booked, full payment is required twelve (12) weeks prior to the intended departure date.
- (d) Failure to make full payment of airfares may result in the cancellation of reservations and anything else which the third party provider may determine in accordance with its terms and conditions.

### 5.5. Method of payment

Any payment of any kind dues under these terms and conditions shall be made by direct deposit to Our nominated bank account.

## 6. CANCELLATIONS, REFUNDS, ALTERATIONS AND INSURANCE

### 6.1. Cancellations

If You cancel the tour or any part of the tour You book through Us, any Deposits then paid will be forfeited. This is because a significant portion of the costs We incur is actually before

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the group departs (staff time with the managing of reservations for all accommodation and sightseeing attractions, preparing the final itinerary etc). As such, We need to ensure that We have recovered these costs when cancellations occur.

### **6.2. Refunds**

If tours have been paid in full prior to travel, no monies will be refunded.

### **6.3. Alterations**

If You request alterations or amendments to itineraries, dates, or any other aspects of the tour You book through Us, We are under no obligation to accede to such requests, but We will endeavor to meet any such requests. Additional charges will be incurred for these alterations or amendments. These costs may be outside of Our control and subject to the discretion of third party service providers. While We will endeavour to accommodate any changes, We cannot guarantee that we will be able to do so, as it depends on their terms and conditions.

### **6.4. Alterations by Us**

- (a) We reserve the right to make any alterations or amendments to any aspects of the tour You book through Us, if We consider, in Our reasonable sole discretion, the alteration or amendment to be necessary or reasonably required. This may be due to or a result of an amendment or alteration that has been requested by You.
- (b) If We make an alteration or amendment to any aspect of the tour You book through Us in accordance with clause 6.4(a), We will notify You of that decision, and provide a reason for that decision.

### **6.5. Travel Insurance**

- (a) We do not include travel Insurance in Our charges. However, We always encourage that You explore the cost of investing in travel Insurance. Upon request, We can supply details of travel Insurance charges when You confirm back if it is required.

## **7. TAXES**

- 7.1.** Any reference to a term that is defined or is apparent in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (the '**Goods and Services Tax**') is to be understood as it is defined or used in that legislation unless the context requires otherwise.
- 7.2.** In the event that a Goods and Services Tax (the '**GST**') applies to any transactions made in accordance with this Agreement, the costs of the transaction will be increased by the rate at which GST is applicable to. This additional costs must be paid as it is accompanied by the original transaction cost.
- 7.3.** GST will not be charged on the cost of international flights. This exemption applies to all international flight bookings made through Our services.

## **8. EXCHANGE RATES**

- 8.1.** We would like to advise You that the quote within the Letter of Offer can be subjected to exchange rates which can fluctuate the dollar amount that is payable to Us and the fluctuation is outside of Our control.
- 8.2.** The exchange rate will be dependent on the country in which You travel to or as stated in the Letter of Offer.
  - 8.2.1. The excursion cost can be adjusted upwards or downwards depending on the fluctuation of the exchange rate in the event of any material change in the rate when payments are made.

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- 8.3.** We will endeavour to keep You informed to the best of Our ability and as reasonable in relation to any exchange rate changes and any major movements in the rate to enable You to take any necessary action to maximize the benefit or minimise the negative impact of any changes in relation to the exchange rate.
- 8.4.** You agree that in the event of any fluctuations in the exchange rate, You will be responsible for any differences and variations in the price. You further agree to indemnify and hold Us harmless for any loss incurred as a result of such fluctuations.

### **9. AGENCY**

- You acknowledge and agree that, notwithstanding anything to the contrary:
- (a) We act as an agent for third party service providers not named in these terms and conditions when making arrangements for Your tour;
  - (b) We sell various travel related Services and products on behalf of various third party service providers;
  - (c) We will endeavour to provide the Services to You with due care and skill but You agree that we are not responsible nor liable for any act or omission of a third party. There are no express nor implied warranties or representations regarding the standard of their services;
  - (d) All bookings are made subject to the terms and conditions and limitations of liabilities imposed by these third party service providers; and
  - (e) You agree that any Claim, loss, action, damage, cost, liability, expense or payment which You may become entitled to due to any act or omission of any third

party is against the specific third party provider and not Us.

### **10. BREACH AND TERMINATION**

- 10.1** The Parties agree that any Breach of these terms and conditions will result in termination (the '**Termination**') of this Terms and Conditions Agreement. Any amounts that have been paid to third parties for costs associated with travel cannot be claimed back through Us.
- 10.2** The Parties agree and understand that Termination as a result of Breach will result in the other Party being entitled to seek damages and remedies for any loss or damages sustained and that the following acts will constitute a Breach:
- (a) non payment when payment is due;
  - (b) not providing passenger names in full for group airline tickets;
  - (c) not providing special dietary requirements of passengers who require them;
  - (d) not communicating in an efficient or timely manner; or
  - (e) providing information that is inaccurate, confusing, misleading or causes a delay in the delivery of Services.

### **11. LIMIT OF LIABILITY**

To the extent permitted by law and not including liability for wilful misconduct negligence and breach of statutory duty, We exclude all liability for any loss, or damage whatsoever (including but not limited to physical and psychological injury, loss or damage to property of whatever nature) that may arise in any way in connection with the offer or supply of goods or Services through Us or any third parties or in connection with the

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supply of such goods or Services. If the law implies a condition or warranty that cannot be excluded, Our liability for a breach of the condition or warranty will be limited as determined by Us to the resupply or to the payment of the cost of resupplying the relevant goods or Services. The total aggregate liability shall not exceed the amount You have paid to Us over the preceding 12 months.

### **12. EVENTS BEYOND OUR CONTROL**

#### **12.1. Force Majeure Events**

For the purposes of this clause 12, Force Majeure Events includes:

- (a) fire accident, explosion, earthquake, storm, tempest, or other acts of God;
- (b) epidemic, disease, or other similar public health concerns;
- (c) war, invasion, act of foreign enemies including terrorism, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation of property by order of any state authority;
- (d) industrial action of a statewide or national industry wide nature, including strike, lockout, stoppage, ban or limitation of work, or other industrial dispute; or
- (e) any other event or circumstance outside Our control.

#### **12.2. Effect of Force Majeure Events**

- (a) Where a Force Majeure Event occurs, or is to occur, during tour:
  - (i) We shall not be held responsible to perform any of Our obligations under these terms and conditions or Our Letter of Offer, save and

except for the obligations imposed by this clause;

- (ii) If We are not able to perform Our obligations under these terms and conditions or Our Letter of Offer, We must immediately notify You of Our inability to comply with Our obligations, including the reason(s) for Our inability to comply with Our obligations;
  - (iii) You will not be entitled to any compensation from Us for Our failure to perform any of Our obligations under these terms and conditions or Our Letter of Offer; and
  - (iv) You will not be entitled to any compensation from Us for injury, damage, loss, delay, additional expenses or inconvenience caused directly or indirectly as a result of a Force Majeure event.
- (b) For the purpose of clause 12.2(a), a Force Majeure Event which is to occur means a Force Majeure Event that has a high probability of occurring, or will almost certainly occur.
  - (c) Upon Completion of a Force Majeure Event, We will recommence the performance of Our obligations under these terms and conditions or Our Letter of Offer, unless the circumstances prevent Us from performing Our obligations.
  - (d) While We will endeavour to perform Our obligations under these terms and conditions or Our Letter of Offer, we may seek compensation from You for Our costs incurred and any upfront payments We have made on Your behalf.



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### 13. YOUR RESPONSIBILITIES AND SUPERVISION

You acknowledge and agree that:

- (a) We will not be responsible for providing supervision of the tour attendees on any booked tours;
- (b) it is Your responsibility to provide any supervision necessary or reasonably required for tour attendees, and without limiting the generality of this clause 10(b), You must provide an adequate number of teachers or supervisors competent to provide supervision of the students.
- (c) It is Your responsibility to provide Us with the full names of all passengers and attendees for any bookings We are required to make on your behalf. Failure to do so may result in Your inability to travel on the day of departure or Termination of Our Agreement to supply Services if We do not receive the necessary information in a timely manner.

### 14. FIRST AID

You acknowledge and agree that it is Your responsibility to provide:

- (a) supervisors qualified to provide first aid for the tour attendees; and
- (b) any first aid equipment necessary or reasonably required having regard to the individual needs of each tour attendee.

### 15. SPECIAL DIETARY REQUIREMENTS

#### 15.1. Collecting dietary information

You acknowledge and agree that it is Your responsibility to:

- (a) collect any personal information (the '**Personal Information**') necessary or reasonably required to identify which tour attendees have special dietary requirements; and
- (b) to provide the Personal Information referred in clause 15.1(a) to Us no later than when the final payment is due to allow Us to adequately plan and organize tours.

#### 15.2. Dietary requirement forms

- (a) We or one of Our third party service providers will provide You with a pro-forma dietary requirements form which is developed and updated from time to time in consultation with third party service providers.
- (b) You agree to:
  - (i) forthwith provide these dietary requirement forms to the parent(s) or guardian(s) of each individual tour attendee;
  - (ii) return to Us (or as directed on the forms) duly completed, unamended (except as agreed in writing with us) and executed dietary requirement forms for every intended tour attendee within the time frame stated on the forms.
- (c) If that form for a particular attendee has not been returned to Us within that time frame, We or the relevant third party service provider may decline to provide any services to that attendee.

#### 15.3. Privacy

You warrant that You are permitted to collect, store, use and disclose Personally Identifiable

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Information or Personal Information as contemplated by this clause 15.

parties, whether or not those amounts will be refunded (in part or in full) shall be determined by the refund policy of each third party to whom monies have been paid.

### **16. INDEMNITY**

You agree to indemnify Us, and keep Us indemnified now and in the future, in relation to any Claim, action, demand or proceedings whether in contract, tort or otherwise, made by or on behalf of any tour attendee or other participant in relation to or arising out of the tour booked through Us or the supply of goods or Services arising from that booking. This indemnity shall be a continuing obligation.

- (e) Notwithstanding the above:
- i. the parties agree and understand that the fees and costs for each tour are subject to the number of attendees and the cost for a tour may be subject to change if the number of individual attendees change;
  - ii. a decrease in the number of individual attendees may result in a higher price per attendee for a tour as the cost is to be shared between less attendees; and
  - iii. You agree to indemnify Us against any loss or claim with respect to clause 17 if we decline to provide Services to any intended tour attendee per sub clause 17(a) and this causes an increase in price payable per attendee as outlined in sub clause 17(e)(ii).

### **17. DECLINING SERVICE**

- (a) We reserve the right to decline to provide Our Services to any intended tour attendee, with such decisions to be made in Our sole and absolute discretion.
- (b) If We decline to provide Our Services in accordance with clause 17(a), We:
  - (i) will notify You of that decision no later than four (4) weeks prior to the intended departure time of the tour; but
  - (ii) are not required to provide any reasons for Our decision.
- (c) Subject to clauses 5.1(a) and 17(d), any Deposits or other monies paid to Us in respect of any attendees to whom We decline to provide Our Services will be refunded.
- (d) Clause 17(c) only applies to the extent that a refund of Deposits or other monies paid to Us is possible, namely in that:
  - (i) if any Deposit or other monies paid to Us have not yet been paid to third parties, then those amounts will be refunded in full;
  - (ii) if any Deposit or other monies paid to Us have been paid to third

### **18. PRIVACY POLICY**

**18.1.** By agreeing to these terms and conditions, You acknowledge and warrant that You have read the terms and conditions of Our Privacy Policy which can be accessed at [\[insert hyperlink\]](#). You understand and agree that You have had sufficient opportunity to read Our Privacy Policy and raise any questions with Us.

### **19. GOVERNING LAW**

These terms and conditions and Our Letter of Offer are governed by the laws of [New South Wales](#) and any action arising under or in any

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way connected with the booking may only be brought in a court within **New South Wales**, and You submit to the non-exclusive jurisdiction of the courts of **New South Wales**.

### **20. AUTHORITY**

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The person making this booking warrants that they have full authority to enter into this Agreement on Your behalf and shall indemnify Us in relation to any damage or loss suffered as a result of a breach of this warranty.

### **21. SEEKING INDEPENDENT LEGAL ADVICE**

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You hereby acknowledge that You have:

- (a) sought independent legal advice prior to signing this Agreement;
- (b) carefully reviewed every part of this Agreement and understand its privacy obligations, particularly how they align with the Australian Privacy Principles and the broader *Privacy Act 1988* (Cth) to ensure compliance; and
- (c) been afforded the opportunity to obtain independent legal advice and confirm by the execution and delivery of this Agreement that You have either done so or waived Your right to do so in connection with the entering into of this Agreement.