

Chimu Adventures PTY LTD
Terms and Conditions

1. Parties

1.1 These terms and conditions form part of the contract between:

1.1.1 Chimu Adventures Pty Ltd (ACN 110 269 380) (“the company”); and

1.1.2 Any person wishing to travel on a tour provided or offered by the company (“the client”)

1.2 The person making the booking for the tour warrants that, before making the booking, he or she has read and has agreed to be bound by these terms and conditions.

1.3 Where the booking for a tour is made other than by all persons wishing to travel on the tour, the person making the booking warrants that he or she has advised each person wishing to travel on the tour of these terms and conditions and further warrants that each such person has agreed to be bound by them.

2. Payment of deposit

2.1 At the time of booking, the client must pay a deposit of at least the following:

2.1.1 In respect of cruises, an amount equivalent to at least 20% of the estimated total cost.

2.1.2 In respect of land tours, transfers and accommodation, an amount equivalent to at least 25% of the estimated total cost.

2.1.3 In respect of airfares, 100% of the estimated total cost.

2.1.4 In respect of the Independent Inca Trail tour, 100% of the estimated total cost.(hereafter referred to as the “minimum deposits”)

2.2 The company shall be at liberty to give notice to the client of any variation to the minimum deposits at any time before the minimum deposits are paid.

2.3 A booking shall not be deemed to have been accepted or to be binding until such time as the minimum deposits, or any of them that are applicable, have been paid.

2.4 The acceptance by the company of payment of a deposit does not, by itself, constitute acceptance of a booking. A booking will be deemed to have been accepted once the company has confirmed its acceptance in writing.

3. Payment of the balance of the tour price

3.1 The balance of the tour price, being the total estimated tour price less any deposits paid, must be paid at least 95 days prior to the client's departure date. For Antarctica bookings operated by Quark Expeditions the balance of the tour price must be made 125 days prior to the client's departure.

3.2 In the event that the balance of the tour price is not paid in accordance with 3.1 above, then the company reserves the right to cancel the client's booking. In that event, the client agrees that he or she shall not be entitled to a refund of any deposit paid, such deposit to be retained by the company by way of compensation for the time spent and work done by it. The company shall however retain a discretion, to be exercised entirely as it thinks fit, as to whether or not to refund all or part of any deposit paid in the event of cancellation in these circumstances.

3.3 In the event that the balance of the tour price is not paid in accordance with 3.1 above, and the company, at its discretion, determines not to cancel the client's booking, then the client agrees to pay to the company any additional charges, fees or expenses that have been or may be properly incurred as a result of the balance of the tour price not having been paid by the stipulated time.

4. Variation by the client

4.1 In the event that the client wishes to vary his or her booking, the request for a variation must be made in writing.

4.2 The company will use reasonable endeavours to try and satisfy the request for variation and will advise the client if it can be satisfied.

4.3 If the request for variation can be satisfied:

4.3.1 The company will advise the client of any variation in the tour price; and

4.3.2 The client agrees to pay to the company an administration fee of \$100 (plus GST) in respect of each variation requested, payable within 14 days of confirmation of the variation.

4.4 If, despite the reasonable endeavours of the company, the request for variation cannot be satisfied, then it is agreed that the booking sought to be varied shall remain in existence (if the client seeks to cancel the booking, the cancellation provisions set out herein will apply).

5. Cancellation by the client

5.1 In the event that the client wishes to cancel a booked tour, then he or she must provide a written notice of cancellation (“the cancellation notice”) to the company.

5.2 The cancellation notice must be:

5.2.1 Delivered to an office of the company; or

5.2.2 Sent by facsimile transmission to the company’s facsimile number existing as at the date of the cancellation notice; or

5.2.3 Sent by e-mail to the company’s e-mail address existing as at the date of the cancellation notice.

5.3 In the event that the cancellation notice is received by the company more than 95 days before the client’s departure date (or 125 days before the client's departure date for any Antarctica cruises operated by Quark Expeditions), then the company shall refund to the client all monies paid less any deposit as set out in 2.1 above and which deposit the company shall be entitled to retain as compensation for the work done and time spent by it.

5.4 In the event that the cancellation notice is received by the company 95 days or less before the departure date (or 125 days or less before the departure date for any Antarctica cruises operated by Quark Expeditions), then the company shall not be obliged to make any refund to the client. In this respect, the client acknowledges that, in addition to the work done and time spent by it, the company will have paid monies to tour suppliers and it may not be possible for the company to obtain a refund from these suppliers where the cancellation notice is received within that period. Notwithstanding that, the company shall, if practical, and at its sole discretion, make such refund as circumstances reasonably permit.

5.5 In the event that the cancellation notice is received in respect of the Independent Inca Trail tour, the client shall not be entitled to any refund irrespective of when the cancellation notice is received.

5.6 The company strongly recommends that the client take out and maintain a policy of insurance to cover cancellation of any tours.

6. Variation or cancellation by the company

6.1 The company will use its best endeavours to provide any tour that is advertised or offered. However, it may be necessary for the company to vary or even cancel some tours, whether due to force majeure or otherwise. Where it becomes necessary for the company to vary or cancel a tour, the company will use its best endeavours to provide an alternate tour that is substantially the same or as similar as practical to the tour that is advertised or offered. The client acknowledges that such a necessity may arise from time to time and the client warrants not to make any claim of any nature, subject to these terms and conditions, against the company in respect of any such variations or cancellations.

6.2 The client acknowledges that the company may, in order to provide maximum opportunities for the client, propose flexible or alternate arrangements. Any flexible or alternate arrangements may extend to routes, schedules, itineraries, amenities and mode of transport. The client accepts, at the time of booking, the possibility for and appropriateness of such flexible or alternate arrangements and shall make no claim against the company in respect thereof. The information provided by the company in its brochures is correct to the best of the knowledge of the company at the time of print but the company does not, and cannot, guarantee that any item or amenity will be available at the time requested by the client.

6.3 When it is necessary for the company to substantially vary or cancel a tour that it has advertised or offered, the client shall be at liberty to request the company:

6.2.1 To refund to the client so much of the tour price paid by him or her that the company can reasonably and properly refund, allowing for all the circumstances; or

6.2.2 To credit so much of the tour price paid by him or her as the company can reasonably and properly credit, allowing for all the circumstances, to another tour offered by the company but shall not be entitled to make any further claims against the company.

7. Unused services

7.1 The company shall not be liable to refund to the client any monies paid by the client for a tour, part of a tour or for services not used by the client.

8. Prices

8.1 Prices quoted by the company prior to or at the time of booking are calculated by reference to a number of factors, including exchange rates, Government charges, both in Australia and overseas, transport costs including fuel charges, prices charged by suppliers in other countries and other matters.

8.2 The company will use its best endeavours to ensure that prices quoted by it prior to or at the time of booking remain valid until payment in full is made for the tour. The client acknowledges that some of the variable factors affecting the cost of the tour, including but not limited to those referred to in 8.1 above, may increase between the time of booking and the time of payment in full. In the event of any such increases, the company reserves the right to pass on to the client any such amounts, provided that, subject to term and condition 8.3 below, it does so at least 30 days before the date of departure and the client agrees to pay same.

8.3 Once the client has paid in full for the tour, the company shall not be entitled to pass on to the client any increases in the variable factors referred to above, save where any such increases are imposed by Government regulation, or similar, whether in Australia or overseas, or where such increases, wherever imposed, are solely as a result of fuel surcharges. In that event, the company shall be entitled to require the client to pay such surcharges, and the client agrees to do so.

9. Acceptance of risk

9.1 The client acknowledges that the tours offered by the company may be considered to be, in full or in part, adventurous. That consideration is one taken into account by the client in making the booking. The tours may involve personal risk, such risks to include illness, injury, disease, loss or damage to property, discomfort and inconvenience. The client, in making the booking, accepts such risks and agrees that he or she has made the booking upon the condition that he or she travels at his or her own risk. The client warrants that he or she shall not make any claim against the company for injury or loss, howsoever caused, arising out of the acceptance of such risk.

9.2 It is the responsibility of the client to be informed about any travel advisories or warnings issued by any Government Department. If a travel advisory or warning is issued by a Government Department in relation to a destination to which the client has booked to go, then the client may, at his or her discretion, cancel the booking (and in which case the cancellation provisions herein referred to will apply) or proceeding with it. If the client decides to proceed with the booking, then the client acknowledges and agrees that he or she has decided to do so at his or her own risk and will not make any claims against the company in respect thereof.

10. Insurance

10.1 The client shall, prior to or at the time of booking, take out, and maintain for the duration of the tour, insurance that will provide indemnity to the client for at least the following:

10.1.1 Unlimited medical expenses; and

10.1.2 Unlimited repatriation expenses.

10.2 The company shall, at any time, be at liberty to request the client to produce to the company a copy of a policy or certificate of insurance to show that 10.1 above has been satisfied. In the event that the client fails to produce a copy of the policy or certificate within 48 hours after being so requested by the company, then the company reserves the right to cancel the client's booking, and in which case any monies paid by the client shall be forfeited to and retained by the company by way of compensation for the work done and time spent by it. The client acknowledges that the request for evidence of such insurance is an important request in relation to the company's business.

11. Authority on tour

11.1 At all times, the decision of the company's tour leader or representative will be final on all matters of or pertaining to the tour. The client agrees to comply at all times with any decisions or directions of the company's tour leader or representative as well as with the laws, customs requirements, foreign exchange requirements and drug regulations of all countries to be visited.

11.2 Should the client fail to comply with a decision or direction of the company's tour leader or representative, unless same shall be manifestly unreasonable or unlawful, then the tour leader or representative may require the client to leave the tour and in which case the client agrees to do so. In that event, the client shall not be entitled to make any claim against the company and warrants that he or she will not do so.

12. Travel documents

12.1 The client acknowledges that it is his or her responsibility to obtain and maintain a valid passport, any valid visas, permits or certificates, including vaccination certificates, for any tour booked with the company. The client further acknowledges that it is his or her responsibility to ascertain any requirements for such matters and to ensure that those requirements are satisfied.

12.2 Whilst the company will endeavour to notify the client of any changes to matters of the type referred to in 12.1 above, the client acknowledges that the company has

no legal responsibility to do so and further acknowledges that it is the client's responsibility to ascertain such matters.

13. Disclaimer of liability

13.1 The company will use its best endeavours to ensure that its obligations pursuant to the contract with the client are satisfied. However, despite those best endeavours, it is not always possible for those obligations to be satisfied. Unless otherwise excluded or modified by law, the company hereby disclaims liability for any loss of or damage to the client, including loss of life or injury, and loss of or damage to any of the client's property, however such loss or damage may be caused. Unless such disclaimer shall be excluded or modified by law, the client warrants that he or she will not make or pursue any claim against the company in respect of any such loss or damage, however caused.

13.2 The client acknowledges that the provisions of 13.1 above are reasonable and necessary for the business of the company having regard to a range of matters including but not limited to the following:

13.2.1 The adventurous nature of tours advertised and offered by the company

13.2.2 The location where tours are conducted, and where services, amenities and facilities may be of a lower standard than the standard to which a client is accustomed.

13.2.3 The tours or parts of them are supplied or undertaken by third party operators. Whilst the company has undertaken due diligence on the quality of the services offered by such third party operators, and has been satisfied as to the adequacy of that quality, it cannot be responsible for any acts or omissions on their parts.

13.3 The client also acknowledges that there may be flight delays (due to circumstances beyond the control of the company) that may lead to interference with a tour for which the client has booked. The company will not be responsible for any flight delays or loss of flight connections whether such loss is caused by the client, the company, any of its suppliers, an airline or other. In the case of any loss of flight connections, whilst every effort will be made by the company to continue with the booked tour, the company will not be liable to compensate clients for any lost part of their itinerary and the company will not be liable to pay for any additional costs that may be incurred by the client as a result of any loss. The company strongly recommends that clients have insurance that will cover them for flight cancellations and delays.

13.4 The client acknowledges that it is the client's responsibility to check-in on time for his or her flight at any airport. The company will not be responsible for any flights that are not taken by the client due to the client's late arrival at any airport. It is also the client's responsibility to contact the relevant airline companies at an appropriate

time before any flight departure to confirm that all details relating to their flights are correct.

14. Medical condition

14.1 The client warrants that he or she has disclosed or will disclose to the company prior to or at the time of the booking of a tour any adverse medical condition from which the client has suffered during a period of 2 years prior to the date of booking. The client acknowledges that such disclosure is important and relevant because it may affect the willingness of the company to accept the client's booking and may affect any advice that the company would seek to give to the client in relation to any proposed tour.

15. Allergies

15.1 The client warrants that he or she has disclosed or will disclose to the company prior to or at the time of the booking of a tour any allergies, including food allergies, from which the client suffers. The client acknowledges that such disclosure is important and relevant because it may affect the willingness of the company to accept the client's booking and may affect any advice that the company would seek to give to the client in relation to any proposed tour.

16. Credit card merchants fee

16.1 The client acknowledges that payment by the client by credit card will attract a merchant fee and which the client agrees to pay to the company. Currently, the merchant fee is 2% for any amount debited by Visa or Mastercard and 3% for any amount debited by American Express card. The credit card fee will be debited to the client's credit card at the time of payment of the balance of the tour price. The credit card fee will generally be waived on initial deposits.

17. Conventions

17.1 The client acknowledges that there exists a number of international conventions governing travel and specifically limiting liability and compensation in certain circumstances. These conventions include by are not limited to: Warsaw Convention 1929 as amended by the Hague Protocol of 1955; Berne Convention 1961; Athens Convention 1974; Paris Convention 1962; Geneva Convention 1973 and the Montreal Convention 1999. The client acknowledges that some or all of those conventions may apply to any tour to be undertaken by the client.

18. Binding law

18.1 The contract between the company and the client, including these terms and conditions, are subject to and are to be construed in accordance with the laws of the State of New South Wales and, as appropriate, the Commonwealth of Australia. In relation to any dispute between the parties, the company and the client agree to submit to the exclusive jurisdiction of the Courts of New South Wales.

19. Variation

19.1 These terms and conditions may only be varied with the prior written consent of the company.

20. Superseding effect

20.1 The terms and conditions set out herein supersede any previous understandings, arrangements or terms and conditions that may previously have existed between the company and the client.

21. Binding effect

21.1 The contract between the company and the client, including these terms and conditions, shall be binding upon the heirs and successors of the parties hereto.

22. Data Protection

22.1 The company will use its best endeavours to protect the client's personal information. However, the client acknowledges that the company will, in order to provide the services or products in question, need to provide some or all of the client's personal information to third parties, including overseas tour suppliers.