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## JETTY DIVE TERMS & CONDITIONS

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### COPYRIGHT WARNING

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In addition to a civil action including, an action for substantial damages for breach of copyright, contraventions of the copyright act may constitute criminal offences punishable by a heavy fine for a first offence. For a subsequent offence the penalty may be an even heavier fine and / or six (6) months imprisonment. Both individuals (including, without limitation, directors) and a company may be joined in any such legal actions.

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## **JETTY DIVE TERMS & CONDITIONS**

### JETTY DIVE APPLICATION

- 1) Jetty Dive.com.au (Jetty Dive) is the rightful owner of the Jetty Dive Mobile Phone Application (the App) and the Jetty Dive Website (the Website) and these Terms and Conditions (Ts + Cs) apply to the use of the App and Website by you (User).

### ACCEPTANCE FOR TERMS

- 2) Jetty Dive advises that by your use of the App and Website (Website) you agree to be bound by these Ts + Cs and any conditions of sale. If you do not agree to these Ts + Cs do not use this Site and do not click "I AGREE". If you wish to proceed click "I AGREE" which signifies your acknowledgement of and agreement to be bound by these Ts + Cs.
- 3) Jetty Dive reserves the right to amend this Site and your continued use is an acceptance of any such changes.
- 4) Jetty Dive reserves the right to terminate any Users' use of this Site at any time without Notice and may do so for any breach of this Agreement.
- 5) This Agreement must be completed, understood and agreed to by a person over the age of 18 - if a parent or guardian wishes to permit a person under 18 to access the Site he or she may do so by granting explicit permission and acceptance of full legal responsibility. If you are not yet 18 or are accessing this Site from any country where this material is prohibited please exit now as you did not have proper authorisation.
- 6) Jetty Dive accepts that upon your agreement - indicated by your clicking "I AGREE" - and being 18 years or older or as set out in the previous condition Jetty Dive grants to you a nonexclusive, non-transferrable, limited licence to use this Site in strict accordance with this Agreement and you further agree:
  - (a) Not to make any false or fraudulent statements as you use this Site;
  - (b) That all content and services available on this Site are the property of Jetty Dive and are protected by Copyright, Trade Mark registration, trade secrets and other proprietary rights and laws in Australia and internationally;
  - (c) Any rights not granted are fully reserved by Jetty Dive, its Associates and its advertisers;
  - (d) To pay for any and all purchases and services through the Site using your name and Credit Card or B-Pay facility (Biller Code) through this Site and not to challenge any such charges and to pay for all collections and/or legal fees resulting from any non-payment.
  - (e) Not to chargeback payment made to Jetty Dive or dispute charges from or payment made to Jetty Dive or any Jetty Dive client.

### THIRD PARTY TRANSACTIONS

- 7) The Application provides an advertising platform for Merchants to offer special deals (Deals) and promote Merchant's business - Jetty Dive will not be held accountable for compensation if any

Merchant does not deliver the goods or services (Goods or Services) as stated in any Deal and indicated in the App.

- 8) The transaction occurs between you and the Merchant and Jetty Dive not being a party to the transactions cannot exchange or refund any Deal - refunds and exchanges can only occur via the Merchant and the User.
- 9) All Deals must be used or redeemed in accordance with any terms of the Deal and must be used by the expiry date and otherwise complied within the terms shown on the Deal or the Deal is invalid.

#### INDEMNITIES

- 10) You agree to indemnify Jetty Dive for any responsibility in the event that you suffer any damages or loss as a result of using or consuming any Goods or Services purchased through Deals where details of those Deals have been advertised and promoted on the App and you also further agree to indemnify Jetty Dive for claims or refunds for faulty Goods or Services purchased through Deals advertised and promoted on the App.

#### SERVER AVAILABILITY

- 11) The App is an online service relying on server availability and while the server operates 24 hours a day there is a possibility of intermittent failure but in the event of any failure or downtime due to technical faults or updates Jetty Dive will not be held accountable for compensation for Deals missed or not concluded as a result of this downtime.
- 12) Jetty Dive will endeavour to ensure the App and Website are secure and free from any viruses, bugs, spyware, Trojans and any other harmful technologies and the User agrees to these terms and will not hold Jetty Dive responsible for any damage howsoever caused.

#### RESERVATION OF RIGHT

- 13) Jetty Dive reserves the right to correct any error or inaccuracy that appears on any Deal represented on the App but cannot be held responsible in any way for errors or inaccuracies shown on the App.

#### LICENCE RESTRICTIONS

- 14) Except as may be explicitly permitted, you agree not to save, download, cut and paste, sell, license, rent, lease, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, or create derivative works from materials from this Site. Systematic retrieval of data or other content from this Site to create or compile, directly or indirectly, a collection, database or directory without written permission from Jetty Dive is prohibited. In addition, use of the content or materials for any purpose not expressly permitted in these Ts + Cs is prohibited.

#### SECURITY

- 15) You agree that if you are issued a Username and Password by Jetty Dive, you shall use your best efforts to prevent access to this Site through your Username and Password by anyone other than yourself, including but not limited to, keeping such information strictly confidential, notifying Jetty Dive immediately if you discover loss or access to such information by an unauthorised party and by using a secure Username and Password not easily guessed or ascertained by a third party.
- 16) You agree that you will not try to reverse assemble, reverse compile, decompile, disassemble, translate or otherwise alter any executable code, contents or materials on or received via this Site. You understand that such actions are likely to subject you to serious civil and criminal legal

penalties and that Jetty Dive shall pursue such penalties to the full extent of the law to protect its rights and the rights of other interested parties.

#### EXPORT

- 17) You agree that you shall comply with all applicable export and import control laws and regulations in your use of this Site, or Goods or Services received through this Site, and, in particular, you shall not export or re-export anything on or received through this Site in violation or local or foreign export laws and/or without all required Australian, and foreign government licences and laws.

#### ERRORS AND CORRECTIONS

- 18) While Jetty Dive uses reasonable efforts to include accurate and current information on our Site, we do not warrant or represent that the Site will be error-free. Data entry errors or other technical problems may sometimes result in inaccurate information being shown. Jetty Dive reserves the right to correct any inaccuracies or typographical errors on our Site, including pricing and availability of Goods and Services, and shall have no liability for such errors. Jetty Dive may also make improvements and/or changes to the Site's features, functionality, or content at any time. If you see any information or description you believe to be incorrect, please contact us and we will verify it for you.

#### LINKS TO OTHER WEBSITE

- 19) The Site contains links to other websites for your information and convenience, or to provide additional shopping for various other Goods and Services through our Merchant and Services Partners. These third-party websites are responsible for, and undertake to maintain, their own site terms of use. Jetty Dive suggests that you carefully review the terms of use of each site you choose to access from our Site.

#### USER'S LICENCE GRANT TO SITE

- 20) Except with regard to personal information, all information which you post on this Site or communicate to Jetty Dive through this Site (collectively "Submissions") shall forever be the property of Jetty Dive. Jetty Dive shall not treat any Submission as confidential and shall not incur any liability as a result of any similarities that may appear in future Jetty Dive services or products or Goods and Services. Without copy, Jetty Dive shall have exclusive ownership of all present and future existing rights to any Submission of every kind and nature everywhere. You acknowledge that you are fully responsible for the message, including its legality, reliability, appropriateness, originality and Copyright. You hereby represent and warrant that your Submission does not infringe the rights of any third party.

#### USER CONDUCT

- 21) By using features of this Site that allow you to post or otherwise transmit information to or through this Site, or which may be seen by other users, you agree that you shall not upload, post, or otherwise distribute or facilitate distribution of any content – including text, communications, video, software, images, sounds, data, or other information – that:
- (a) Is unlawful, threatening, abusive, harassing, defamatory, libellous, deceptive, fraudulent, invasive of another's privacy, tortuous, obscene, sexually explicit or graphic, or otherwise in violation of this Site's rules or policies;
  - (b) Infringes any patent, trade mark, service mark, trade secret, copyright, moral right, right of publicity, privacy or other proprietary right of any party;

- (c) Constitutes unauthorised or unsolicited advertising, junk or bulk e-mail (also known as “spamming”), chain letters, any other form of unauthorised solicitation, or any form of lottery or gambling;
- (d) Contains software viruses or any other computer code, files, or programs that are designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment or to damage or obtain unauthorised access to any data or other information of any third party; or
- (e) Impersonates any person or entity, including any employee or representative of this Site, its licensors or advertisers.
- 22) You agree that you shall not harvest or collect information about the users of this Site or use such information for the purpose of transmitting or facilitating transmission of unsolicited bulk electronic email or communications for any other commercial purpose of your own or a third party.
- 23) You agree that you shall not solicit or collect information, or attempt to induce any physical contact with, anyone 18 years old or younger without appropriate parental consent.
- 24) You acknowledge this Site generally does not pre-screen, monitor, or edit the content posted by users of this Site. However, this Site and its agents have the right, at their sole discretion, to remove any content that, in this Site’s sole judgment, does not comply with the Submission Rules or is otherwise harmful, objectionable, or inaccurate. This Site is not liable for any failure, delay, damages or results, in removing such content.
- 25) You agree that your use of this Site may be suspended or terminated immediately upon receipt of any notice which alleges that you have used this Site in violation of these Rules and/or for any purpose that violates any local, state, federal or law of other nations, including but not limited to the posting of information that may violate third party rights, that may defame a third party, that may be obscene or pornographic, that may harass or assault others, that may violate hacking or other criminal regulations and similar of its agents, officers, directors, contractors or employees. In such event, you agree that the owner of this Site may disclose your identity and contact information, if requested by a government or law enforcement body or as a result of a subpoena or other legal action, and the owner of this Site shall not be liable for damages or result of a subpoena or other legal action, and the owner of this Site shall not be liable for damages or results thereof, and you agree not to bring any action or claim against the owner of this Site for such disclosure.

#### INTELLECTUAL PROPERTY RIGHTS

- 26) (a) Copyright  
The Site design, text, content, selection and arrangement of elements, organisation, graphics, compilation, magnetic translation, digital conversion, and other matters related to the Site are protected under applicable Copyright laws.  
The posting of any such elements on the Site does not constitute a waiver of any right in such elements. You do not acquire ownership rights to any such elements viewed through the Site. Except as otherwise provided herein, none of these elements may be used, copied, reproduced, downloaded, posted, displayed, transmitted by mechanical, photocopying, recording or otherwise, without Jetty Dive’s prior written permission.
- (b) Trademark  
Jetty Dive, Jetty Dive.com.au, logo, and all product names, company names, and other logos, unless otherwise noted, are pending trademarks and/or trade dress of Jetty Dive. The use or

misuse of any trademarks or any other materials contained on the Site, without the prior written permission of Jetty Dive, is expressly prohibited.

#### THIRD PARTY SITES

- 27) You may be transferred to online merchants or other third party sites through links or frames from this Site. You are cautioned to read their Ts + Cs and/or Privacy Policies before using such sites. These sites may contain information or material that is illegal, unreasonable or that some people may find inappropriate or offensive. These other sites are not under the control of Jetty Dive and are not monitored or reviewed by Jetty Dive. The inclusion of such a link or frame does not imply endorsement of any site by Jetty Dive, its advertisers or licensors, or any association with its operators and is provided solely for your convenience. You agree that Jetty Dive and its licensors have no liability whatsoever from such third party sites and your usage of them.

#### RETURNS

- 28) It is your responsibility to notify Jetty Dive as soon as possible if the item purchased is not suitable or if it has been damaged in transit. Jetty Dive will take all possible care in packing to ensure minimal movement within the package during shipping. Refunds will be processed upon receipt of the items in an as **New Saleable Condition**. Returns are to be sent at the cost of the returning party unless agreed by Jetty Dive prior to return item being sent. Jetty Dive reserves the right to reduce the amount refunded for damaged packaging where it left the store in new condition. Refunds will be reduced by the original cost of delivery, which may have been included in the cost of the goods. Any returns of products paid by AFTERPAY payments will incur a minimum of 10% restocking fee plus delivery costs, which will cover the cost of fees charged to Jetty Dive by Afterpay.

#### DEPOSITS AND COURSE BOOKINGS ON CHARTER TRIPS

- 29) Jetty Dive will provide the charter trip for bookings (can include Half Day Double Dive, Snorkelling Trip, Whale Swimming Trip, Whale Watching Trip, Eco Tour, and any other charters offered by Jetty Dive Centre) and courses. Once the customer has agreed to attend, they are considered "booked on". Deposits and/or portions of booking fees or course fees will be taken to secure customer's booked position on the boat. 48 hours' notice is required for rescheduling or cancellation of any portion of course, or charter trip booking. It is the individual customer's responsibility to attend the charter trip/portion of course or give notice 48 hours prior to the trip if unable to attend.
- a) If customer fails to attend (either through non-attendance, rescheduling within 48 hours of commencement of trip, or cancellation within 48 hours of commencement of trip) a portion of their course when "booked on", all deposits will not be returned, and a portion of total cost of course will be deducted (\$200). A payment of \$200 per day missed by customer will be required to be paid to continue course. Final decisions will be made at the discretion of Jetty Dive Centre.
  - b) If customer fails to attend (either through non-attendance, rescheduling within 48 hours of commencement of trip, or cancellation within 48 hours of commencement of trip) their charter trip they will forfeit their deposit, or the total cost for the charter trip booking. Final decisions will be made at the discretion of Jetty Dive Centre.
  - c) If a customer chooses to not participate in any portion of the charter trip booking, this is their own choice. No refund or credit will be offered for non-participation in any portion of the charter trip booking.

If Jetty Dive cancels trip due to conditions or lack of numbers, deposits or full payment will be refunded. Trips are weather dependent and may be cancelled if unsuitable sea conditions prevail. This is a decision made by Jetty Dive Centre Staff. Trips will not go ahead if conditions are unsafe. If the customer fails to attend due to their personal interpretation of weather conditions, this is still considered "fail to attend" as per above conditions and the customer will forfeit payment.

#### GIFT VOUCHERS

- 30) Gift Vouchers (otherwise referred to as Gift Certificate) can be used towards purchase of goods or services at Jetty Dive Centre. The Gift Voucher is purchased for a dollar value which is indicated on the Gift Voucher. The voucher may state "to go towards" a specific service, or specific goods, but this does not entail that voucher will completely cover payment for that service/item at time of redemption. Gift Vouchers have an expiry of three years. Gift Vouchers are non-refundable and cannot be exchanged for cash. Gift Vouchers may only be redeemed by the holder as indicated on the voucher and in Jetty Dive system.

#### DISCLAIMER OF WARRANTIES

- 31) Jetty Dive, its advertisers and licensors make no representation or warranties about the Site, the suitability of the information contained on or received through use of this Site, or any Goods and Services received through this Site. All information and use of this Site are provided "as is" without warranty of any kind. Jetty Dive, advertisers and/or its licensors hereby disclaim all warranties regarding this Site, the information contained or received through use of this Site, and any Goods or Services received through this Site, including all express, statutory, and implied warranties of merchantability, fitness for a particular purpose, title and non-infringement.
- 32) Jetty Dive, its advertisers and/or its licensors do not warrant that the contents or any information received through this Site are accurate, reliable or correct; that this Site will be available at any particular time or location; that any defects or errors will be corrected; or that the contents of any information received through this Site is free of viruses or other harmful components. Your use of this Site is solely at your risk. The User agrees that it has relied on no warranties, representations or statements other than in these Ts + Cs. Because some jurisdictions do not permit the exclusion of certain warranties, these exclusions may not apply to you but shall apply to the maximum extent permitted by the laws of your jurisdiction.

#### LIMITATION OF LIABILITY

- 33) Under no circumstances shall Jetty Dive, its advertisers and/or its licensors be liable for any direct, indirect, punitive, incidental, special, or consequential damages that result from the use or inability to use, this Site. This limitation applies whether the alleged liability is based on contract, tort, negligence, strictly liability, or any other basis, even if Jetty Dive, its advertisers and/or its licensors have been advised of the possibility of such damage. Because some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages Jetty Dive, its advertisers and/or its licensors' liability in such jurisdictions shall be limited to the maximum extent permitted by the laws of your jurisdiction.

#### INDEMNIFICATION

- 34) You agree to defend, indemnify, and hold harmless Jetty Dive, its advertisers, licensors, subsidiaries and other affiliated companies, and their employees, contractors, officers, agents and directors from all liabilities, claims, and expenses, including attorney's fees, that arise from your use of this Site, or any Goods and Services, information or products from this Site, or any violation of these Ts + Cs. Jetty Dive reserves the right, at its own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by you, in which event you shall cooperate with Jetty Dive in asserting any available defences.

#### LEGAL COMPLIANCE

- 35) Jetty Dive may suspend or terminate these Ts + Cs or the User's use immediately upon receipt of any notice which alleges that the User has used this Site for any purpose that violates any local, state, federal or law of other nations, including but not limited to the posting of information that may violate third party rights, that may defame a third party, that may be obscene or pornographic, that may harass or assault other, that may violate hacking or other criminal regulations of its agent, officers, directors, contractors or employees. In such event, Jetty Dive may disclose the User's identity and a subpoena or other legal action, and Jetty Dive shall not be liable for damages or results thereof and the User agrees not to bring any action or claim against Jetty Dive for such disclosure.

#### CHOICE OF LAW AND FORUM

- 36) This Site (excluding third party linked sites) is controlled by Jetty Dive from its offices within Queensland, Australia. It can be accessed from other countries around the world to the extent permitted by the Site. As each country has laws that may differ from Australia, by accessing this Site, both you and Womas agree that the statutes and laws of Australia shall apply to any actions or claims arising out of or on relation to this Agreement or your use of this Site, without regards to conflicts of laws principles thereof. You and Jetty Dive also agree and hereby submit to the filing of any claim only in the exclusive jurisdiction and venue of Queensland, Australia and any legal proceedings shall be conducted in English. Jetty Dive makes no representation that materials on this Site are appropriate or available for use in other locations, and accessing them from territories where their contents are illegal is prohibited.

#### MISCELLANEOUS

- 37) These Ts + Cs incorporates by reference the Submission Rules if this Site allows posting and posts such Rules. These Ts + Cs constitutes the entire agreement between the parties related to the subject matter thereof, supersedes any prior or contemporaneous (oral, written or electronic) agreement between the parties and shall not be changed except by written agreement signed by an officer of Jetty Dive. If any provision of these Ts + Cs are prohibited by law, are held to be unenforceable, the remaining provisions hereof shall not be affected, and these Ts + Cs as much as possible under applicable law shall continue in full force and effect as if such unenforceable provision had never constituted a part hereof and the unenforceable provision shall be automatically amended so as to best accomplish the objectives of such unenforceable provision within the limits of applicable law.

#### SHIPPING

- 38) Jetty Dive will ship within 5-7 working days of purchase to anywhere in Australia. Where a product or service is not available, the purchaser will be notified on the next business day of an approximate delivery date. Generally orders will be sent by Australia Post and it is recommended that you purchase additional insurance for your items as once they are dispatched they can be tracked to your doorstep. Jetty Dive shipping is subject to Australia



Post's shipping conditions. If you prefer to use an alternate shipping company - please notify us at the time of placing your order.

#### REFUND POLICY

- 39) Refunds will be offered in instances where it is agreed that a new item is faulty and cannot be repaired and at the discretion of Jetty Dive staff. Every effort will be made to ensure any merchandise required to be returned to a manufacturer as fast as possible, so it can be returned to the original purchaser in the shortest possible time-frame. Jetty Dive will not issue a refund if you simply change your mind about something you bought, we will however, offer you a store credit to the value of the purchase price. The item must be returned in an as new sale-able condition.

#### PRODUCT AVAILABILITY & LIMITATIONS

- 40) Given the popularity and/or supply constraints of some of our products and/or services, Jetty Dive may have to limit the number of products and/or services available for purchase. Jetty Dive reserves the right to change quantities available for purchase at any time, even after you place an order. Furthermore, there may be occasions when Jetty Dive confirms order but subsequently learns that it cannot supply the ordered product. In the event we cannot supply a product or service you ordered, Jetty Dive will cancel the order and refund your purchase price in full or offer an alternative.
- 41) This Site reserves the right to revise these provisions at its discretion, so check back from time to time to be sure you are complying with the current version.