

# Holiday Accommodation Terms and Conditions

Barwon Grove Holiday Rentals  
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## 1. Definitions

**Agent** means Andrew Smith and Meryll Smith trading as Barwon Grove Holiday Rentals (ABN 88 791 042 964).

**Agreement** means the holiday accommodation agreement between You and the Property Owner, constituted by these Terms and Conditions and any other written terms applicable to the accommodation which are agreed between the parties prior to the commencement of the Stay.

**Booking** means an accepted booking following our receipt of a Booking Form and payment of the Deposit.

**Booking Form** means an application form in relation to the Property, including Your contact details and the duration of the intended Stay.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria.

**Claim** means a claim, action, proceeding, judgment or demand made or brought by or against a person, however arising and whether present, unascertained, future or contingent.

**Conditions** means these holiday accommodation terms and conditions.

**Consumer Guarantees** means the guarantees set out in Division 1, Part 3-2 of the *Australian Consumer Law*.

**Deposit** means a deposit of 20% of the Price payable upon a Booking, as specified in the Property Details.

**Liability or Loss** means any liability, loss, cost, expense, damage, charge, penalty, outgoing or payment, however arising and whether present, unascertained, future or contingent.

**Price** means the price payable for the Property, calculated on a nightly basis.

**Property** means the property the subject of the Booking.

**Property Details** means the details pertaining to the Property as shown on Our website or communicated to You orally or in writing.

**Property Owner** means the owner of the Property You Book for Your Stay.

**Rent** means the rent collected by the Agent in respect of the Property.

**Service Fee** means the amount of \$55.00.

**Stay** means the period of the Booking.

**We, Us or Our** means the Property Owner.

**You or Your** means the person making the Booking.

## 2. Interpretation

- (a) In this Agreement, unless the context requires otherwise:
- (i) the singular includes the plural and vice versa;
  - (ii) the words "in writing" include any communication sent by post or email;
  - (iii) the word "person" includes a natural person and any body or entity whether incorporated or not;
  - (iv) a mention of anything after include, includes or including, does not limit what else might be included;

- (v) a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re enacted or replaced from time to time;
  - (vi) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them separately;
  - (vii) an agreement, representation, warranty or indemnity by two or more persons binds them jointly and each of them separately;
  - (viii) an agreement, representation, warranty or indemnity in favour of two or more persons is for the benefit of them jointly and each of them separately;
  - (ix) no provision of this agreement will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the agreement or the inclusion of the provision in the agreement;
  - (x) all monetary amounts are in Australian dollars, unless otherwise stated and a reference to payment means payment in Australian dollars;
- (b) The Conditions are legally binding between the Agent and the Client.

## 3. General

- (a) You acknowledge and agree that these Terms and Conditions form part of the Agreement between You and the Property Owner.
- (b) You acknowledge and agree that the Agent is the agent for the Property Owner and may exercise all of the rights of the Property Owner, on the Property Owner's behalf, under this Agreement.
- (c) You acknowledge and agree that by completing the Booking Form and paying the Deposit, You are bound by the Agreement, including these Terms and Conditions.

## 4. Bookings

- (a) Should You wish to book the Property, You must complete and submit a Booking Form and pay the Deposit and Service Fee.
- (b) The submission of a completed Booking Form and payment of a Deposit constitutes an offer by You to book the Property for Your intended Stay which can be accepted or rejected by Us within 5 Business Days.
- (c) If We reject Your offer, We will return the Deposit and Service Fee to You within 5 Business Days, subject to bank processing timeframes.
- (d) If We accept Your offer, We will confirm the Booking with You in writing within 5 business Days.
- (e) Should You wish to change Your Booking and We accept such changes, We are entitled to charge You a further Service Fee.

## 5. Price

- (a) The balance of the Price is payable 3 Business Days prior to the commencement of the Stay, or in the case of:

- (i) Stays commencing in December or January, 10 Business Days prior to the commencement of the Stay or 1 December, whichever is earlier; and
  - (ii) Stays which include any day over Easter, 10 Business Days prior to the commencement of the Stay.
- (b) Without limitation, You will not be permitted to check in without making payment of the balance of the Price in full.

#### **6. Cancellations**

- (a) We may cancel Your Booking at anytime more than 30 days prior to the Stay without cause. If we cancel Your Booking without cause, We will refund You the Deposit and Service Fee in full.
- (b) We may cancel Your Booking at any time prior to check in if You fail to pay the balance of the Price in accordance with clause 5. If We take this action, 25% of the Price will be charged to You.
- (c) If You cancel a Booking more than 30 days prior to the Stay, an administration fee of 15% of the Price will be charged to You, unless You book another property with us for the same duration in which case an administration fee of \$100 is payable.
- (d) If You a cancel a Booking within 30 days prior to the commencement of the Stay, 25% of the Price will be charged to You.
- (e) If You engage the Agent to arrange any ancillary goods or services to be provided in connection with Your Stay, these may only be cancelled by You without charge at least 7 days prior to the intended date of supply.

#### **7. Accommodation Licence**

- (a) You acknowledge and agree that Your accommodation at the Property is a mere contractual licence to occupy the Property during the Stay and is subject to Our ability to immediately terminate this licence by oral notice to You upon any breach, or our reasonable suspicion of a breach, of any of the licence conditions set out in clause 6(b). For the purposes of this clause 6, a breach by any person of the licence conditions set out in clause 6(b) during the Stay is deemed to be a breach of such conditions by You.
- (b) During the Stay, You must:
  - (i) comply with any by-laws applicable to the Property;
  - (ii) notify Us as soon as practicable in respect of any damage to the Property or its contents;
  - (iii) notify Us as soon as practicable in respect of any personal injury suffered by any person on the Property; and
  - (iv) permit Us to access the Property between 9:00am to 5:00pm to check compliance with the Agreement upon provision of 2 hours' oral notice.
- (c) During the Stay, You must not:
  - (i) engage in any illegal activity at or around Property;
  - (ii) engage in anti-social activity on or around the Property;
  - (iii) create excessive noise on or around the Property for a sustained period of time;
  - (iv) hold any function on the Property, whether formally or informally, where the invitees at the Property increase by 10 or more at any given time, for example a party;

- (v) permit the Property to be occupied by more persons than the Property occupies as stated on Our website;
- (vi) bring any caravans onto the Property;
- (vii) engage in any activity which places the Property or its contents at risk of material damage;
- (viii) remove any of the contents of the Property;
- (ix) sub-licence the Property to other persons;
- (x) smoke on the Property (unless the Property is stated as smoking friendly on Our Website);
- (xi) permit any domestic animal to access the Property (unless the Property is stated as pet friendly); and
- (xii) in relation to a pet-friendly Property, allow any animal to access the inside of the dwelling on the Property.

#### **8. Your indemnities**

- (a) Each covenant in clauses 8(a) and 8(b) is a separate and independent covenant given by You. They are cumulative in effect.
- (b) You must indemnify, and keep indemnified, the Property Owner, its agents, contractors and employees in relation to any Claim against the Property Owner, its agents, contractors and employees and for any Liability suffered by the Property Owner, its agents, contractors or employees in connection with a breach of this Agreement or any negligent act or omission or wilful misconduct by You or Your invitees on the Property.
- (c) You must indemnify, and keep indemnified, the Property Owner in relation to any Claim against the Property Owner and for any Liability incurred by the Property Owner arising from or in connection with Your breach of this Agreement.
- (d) If any of the separate and independent covenants set out in clauses 8(a) and 8(b) is or becomes invalid or unenforceable for any reason:
  - (i) clause 8(a) applies; and
  - (ii) without limiting the operation of clause 8(a), the covenant which is or becomes invalid or unenforceable is severed from the Agreement.

#### **9. Check In and Check Out**

- (a) You may check in to the Property at any time after midday on the first day of the Stay.
- (b) You must check out of the Property by midday on the last day of the Stay.
- (c) You must attend to the following prior to Check Out:
  - (i) clean the Property so that it is in the same condition it was in at the commencement of Your Stay, including but not limited to the BBQ (if applicable) and any animal waste (if applicable);
  - (ii) place all rubbish in the correct bins on the Property; and
  - (iii) turn off all lights and appliances.

#### **10. Additional charges**

We may charge You reasonable additional amounts following the conclusion of Your Stay in relation to:

- (a) any damage to the Property or its contents caused by You or Your invitees;
- (b) any failure to clean the Property as required under the Agreement;
- (c) the loss of any keys, access passes or garage remotes; and

- (d) any costs reasonably incurred by the Agent in connection with clauses 10(a) to (c), which the parties agree will include an administrative staff cost of \$100 per hour.

**11. Schoolies Bookings**

All schoolies Bookings:

- (a) are at a peak rate Price;
- (b) require a cash security deposit of \$1,000;
- (c) have a 3 car limit in terms of cars that may be parked on the Property during the Stay; and
- (d) require payment of the Price in full at least 30 days prior to the commencement of the Stay.

**12. Risk**

Subject to the operation of the Consumer Guarantees, You acknowledge and agree Your occupation of the Property (and that of any of Your invitees) is at Your sole risk. Specifically:

- (a) We are not liable to You for any breakdown of electrical appliances during the Stay;
- (b) We are not liable to You for any Loss You or Your invitees may suffer as a result of a failure of power or gas or any other services connected to the Property;
- (c) We are not responsible for any personal injury You or Your invitees suffer at the Property;
- (d) We are not responsible for any damage to, or theft of, Your property located on the Property during Your Stay, or left on the Property following Your Stay.
- (e) You are responsible for any damage You or Your invitees cause to the Property or its contents; and
- (f) You are responsible for any personal injury suffered by any person by reason of Your conduct during the Stay.

**13. Excluded Terms**

To the maximum extent permitted by law and excluding the Consumer Guarantees, all terms, conditions and warranties that would be implied into this Agreement or in connection with the supply of the accommodation services under law, statute, custom or international convention are excluded.

**14. Limitation of Liability**

Except in the case of a breach of the Consumer Guarantees, Our liability to You for any loss or damage suffered by You in contract, tort or otherwise is limited to

the refund of the Price or the re-supply of replacement accommodation services.

**15. Client indemnities**

- (a) Each covenant in clauses 15(a) and 15(b) is a separate and independent covenant given by the Client. They are cumulative in effect.
- (b) The Client must indemnify, and keep indemnified, the Agent, its agents, contractors and employees in relation to any Claim against the Agent, its agents, contractors and employees and for any Liability suffered by the Agent arising from or in connection with the Client's breach of this Agreement or any negligent act or omission or wilful misconduct of the Client, its agents, contractors or employees.
- (c) The Client must indemnify, and keep indemnified, the Agent in relation to any Claim against the Agent and for any Liability incurred by the Agent arising from or in connection with the Client's breach of this Agreement.
- (d) If any of the separate and independent covenants set out in clauses 15(a) and 15(b) is or becomes invalid or unenforceable for any reason:
  - (iv) clause 15(a) applies; and
  - (v) without limiting the operation of clause 15(a), the covenant which is or becomes invalid or unenforceable is severed from this Agreement.

**16. Privacy disclosure and consent**

You authorise the Agent to collect and store Your personal information in accordance with the Agent's privacy policy located on the Agent's website and amended from time to time.

**17. General**

- (a) This Agreement shall be governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts operating in that state.
- (a) The Client warrants that this Agreement creates binding and valid legal obligations on it.
- (b) The Client must not assign this Agreement to any other party without the Agent's written consent which may be withheld at its absolute discretion.
- (c) The Client warrants that it has read and understood this Agreement and has had an opportunity to obtain legal advice before executing them.