

TERMS & CONDITIONS AND EXCLUSION OF LIABILITY FOR THE SPORT OF GLIDING

1. I acknowledge and agree that the activity of gliding is an inherently dangerous recreational activity, and gliding carries with it inherent and obvious risks, including the risk of injury or death.
2. I accept that engaging in the activity of gliding is **at my own risk** and accept all risks associated with gliding including the possibility of injury, death, loss or damage.
3. I acknowledge that I am contracting with the Club for the provision of gliding experience and/or gliding instruction services.
4. I agree that I **have been warned** by the GFA and the Club of the risks associated with gliding, including injury, death or loss or damage arising from or in connection with gliding.
5. I agree to obey and comply with all rules and directions made or given by the GFA, the Club, the instructor of the glider, the ground crew, in connection with gliding. If I fail to comply with any rule and/or direction, I accept that I will not be permitted to undertake gliding or to continue to glide.
6. I acknowledge and agree that, to the extent permitted by law, the GFA and the Club, their employees, instructors, contractors, sub-contractors and agents will not be liable for any injury, death, loss or damage suffered by me or by any other person arising from or in connection with my participation in gliding, or to my property regardless of whether such injury, death, loss or damage was caused directly or indirectly by any act or omission of the GFA and/or the Club, including the negligence of the instructor of the glider, or the ground crew. I **unconditionally release and hold harmless** the GFA, the Club, the instructor of the glider, and the ground crew from any and all claims and liabilities for any injury, death, loss or damage arising from or in connection with my participation in gliding.
7. All limitations, exceptions and conditions herein contained as to the liability of the GFA and/or the Club shall apply also to the liability, if any, of owners, charterers, lessee, lessor of the glider, and the GFA and/or the Club employees, instructors, contractors, sub-contractors or agents (hereafter referred to as Third Parties). The Club shall be deemed to contract on behalf of and for the benefit of all persons or companies who are or may be its Third Parties from time to time and all such persons shall to this extent be or be deemed to be parties to the contract contained in or evidenced by this document or the voucher presented to me and for the purpose of all the provisions of this contract, the Club is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons or companies who are or might be Third Parties from time to time and all such persons or companies shall to this extent be or be deemed to be parties to the contract.
8. I agree to **indemnify** the GFA, the Club, the instructor of the glider, the ground crew, and any Third Parties against:
 - (a) any claims made by or on behalf of me in respect of any injury, death, loss or damage to my person or property arising from or in connection with my participation in gliding; and
 - (b) all claims made by any other person against the GFA, the Club, the instructor of the glider, the ground crew, and any Third Parties in respect of any injury, death, loss or damage arising out of or in connection with my failure to comply with this contract or the GFA's rules and/or directions, or the Club's rules and/or directions, including the instructor's rules and/or directions.
9. To the extent permitted by law, I acknowledge and agree that all guarantees, warranties and covenants whether imported, expressed by law, and either in law, equity, under statute or otherwise, are hereby excluded.
10. If I suffer any injury or illness, I agree and consent that the Club may provide first-aid.
11. **Governing Law:** The governing law of this Agreement are the laws of the State where this Agreement is executed within the Commonwealth of Australia ('Jurisdiction'). Each party irrevocably and unconditionally consents and submits to the exclusive Jurisdiction of the courts of the State where this Agreement is executed within the Commonwealth of Australia and waive any right to object to the exercise of such Jurisdiction.

AUSTRALIAN CONSUMER LAW EXCLUSION OF LIABILITY

By signing this form, I agree that any liability that the Club may have under the *Competition and Consumer Act 2010 (Cth)* in relation to recreational services (as that term is defined in the *Competition and Consumer Act 2010 (Cth)*) for any:

- a) death;
- b) physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
- c) the contraction, aggravation or acceleration of a disease;
- d) the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs that:
 - i. is or may be harmful or disadvantageous to you or the community;
 - ii. may result in harm or disadvantage to you or the community;

suffered by me is excluded, and the application of any express or implied term that any services will be provided with due care and skill is hereby excluded. For the avoidance of doubt, this exclusion does not exclude liability for recklessness as defined by any relevant law.

EXCLUSION OF RIGHTS UNDER NSW OR WA LAW

By signing this form, I agree that any liability that the GFA or the Club may have under the Competition and Consumer Act 2010 (Cth), or the Fair Trading Act 1987 (NSW) or the Fair Trading Act 2010 (WA) applies in relation to recreational services (as that term is defined in the Competition and Consumer Act 2010 (Cth) and recreational activities (as that term is defined in the Civil Liability Act 2002 (NSW) (as applicable) for any

- a) death;
- b) physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
- c) the contraction, aggravation or acceleration of a disease;
- d) the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs that:
 - i. is or may be harmful or disadvantageous to you or the community;
 - ii. may result in harm or disadvantage to you or the community;

suffered by me is excluded, and the application of any express or implied term that any services will be provided with due care and skill is hereby excluded. For the avoidance of doubt, this exclusion does not exclude liability for recklessness as defined by any relevant law.

EXCLUSION OF RIGHTS UNDER QLD, TASMANIAN, NT AND ACT LAW

For recreational services to which the Fair Trading Act 1989 (Qld), Australian Consumer Law (Tasmania) Act 2010 (Tas) or Fair Trading (Australian Consumer Law) Act 1992 (ACT) or Consumer Affairs and Fair Trading Act 1990 (NT) applies.

By signing this membership application form and declaration, I acknowledge that where I am a consumer of recreational services, as defined by any relevant law, certain terms and rights usually implied into a contract for the supply of goods or services may be excluded. I acknowledge that these implied terms and rights and any liability of the GFA or the Club are expressly excluded to the extent possible by law, by this membership application form and declaration. I acknowledge and agree that the provisions of Part 3.2, Division 1, sub-division B of the Australian Consumer Law (Northern Territory) do not apply to the services provided to me. By signing this document I acknowledge that I have been made aware of the general effect of this exclusion, restriction or modification, have had a reasonable opportunity to consider whether or not to enter into this contract on that basis and have decided to enter into the contract.

To the extent of any liability arising, the liability of the GFA or the Club will be limited in the case of goods, to the replacement, repair or payment of the cost of replacing the goods and in the case of services, the resupply of the services or payment of the cost of having the services supplied again. For the avoidance of doubt, this exclusion does not exclude liability for recklessness as defined by any relevant law.

EXCLUSION OF RIGHTS UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012 (VICTORIA)

Under the **Australian Consumer Law (Victoria)**, several statutory guarantees apply to the supply of certain goods and services. These guarantees require the supplier named on this form to ensure that the recreational services it supplies to you:

- are rendered with due care and skill; and
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- might reasonably be expected to achieve any result you have made known to the supplier.

Under section 22 of the **Australian Consumer Law and Fair Trading Act 2012**, the supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the **Australian Consumer Law and Fair Trading Act 2012** if you are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in this form.

NOTE: The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. Gross negligence, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the *Australian Consumer Law and Fair Trading Regulations 2012* and section 22(3)(b) of the **Australian Consumer Law and Fair Trading Act 2012**.

EXCLUSION OF RIGHTS UNDER THE AUSTRALIAN CONSUMER LAW (SA)

Your rights:

Under sections 60 and 61 of the *Australian Consumer Law (SA)*, if a person in trade or commerce supplies you with services (including recreational services¹), there is—

- a statutory guarantee that those services will be rendered with due care and skill; and
- a statutory guarantee that those services, and any product resulting from those services, will be reasonably fit for the purpose for which the services are being acquired (as long as that purpose is made known to the supplier); and
- a statutory guarantee that those services, and any product resulting from those services, will be of such a nature, and quality, state or condition, that they might reasonably be expected to achieve the result that the consumer wishes to achieve (as long as that wish is made known to the supplier or a person with whom negotiations have been conducted in relation to the acquisition of the services).

Excluding, restricting or modifying your rights:

Under section 42 of the *Fair Trading Act 1987*, the supplier of recreational services is entitled to ask you to agree to exclude, restrict or modify his or her liability for any personal injury suffered by you or another person for whom or on whose behalf you are acquiring the services (a **third party consumer**).

If you sign this form, you will be agreeing to exclude, restrict or modify the supplier's liability with the result that compensation may not be payable if you or the third party consumer suffer personal injury².

Important:

You do not have to agree to exclude, restrict or modify your rights by signing this form. The supplier may refuse to provide you with the services if you do not agree to exclude, restrict or modify your rights by signing this form. Even if you sign this form, you may still have further legal rights against the supplier. A child under the age of 18 cannot legally agree to exclude, restrict or modify his or her rights. A parent or guardian of a child who acquires recreational services for the child cannot legally agree to exclude, restrict or modify the child's rights.

Agreement to exclude, restrict or modify your rights:

I agree that the liability of The GFA and the Club [*the supplier of recreational services*] for any personal injury that may result from the supply of the recreational services that may be suffered by me (or a person for whom or on whose behalf I am acquiring the services) is—(a) **excluded**;

Definitions

1 **Recreational services** are services that consist of participation in—

- a sporting activity or similar leisure-time pursuit; or any other activity that involves a significant degree of physical exertion or risk and is undertaken for the purposes of recreation, enjoyment or leisure.

2 **Personal injury** is bodily injury and includes mental and nervous shock and death.

Further information: Further information about your rights can be found at www.ocba.sa.gov.au.