

# Terms and Conditions

## BOOKING

These Terms and Conditions (“**Our Terms and Conditions**”) apply to any booking and or Event including Dive Charters, Boat Charters, Private Charters and Dive Courses made with New Zealand Diving Limited Ltd (herein referred to as “us”, “we” or “our”). Please be sure to read our Terms and Conditions carefully. By booking any Dive Charter and or Event(s) you confirm that you have received, read and accept those other terms and conditions for the applicable Dive Charter and or Event(s). In relation to any Dive Charter bookings, we reserve the right to amend or add to Our Terms and Conditions and any related contract documentation so as to be relevant for any Dive Charter, Dive Course and or Event(s), such terms to be agreed to by you in accordance with Our Terms and Conditions and via our written order or invoice to you.

### 1. YOUR CONTRACT

Your contract is with us, subject to the above. When making your booking, the person signing the booking form or paying the deposit for the booking (the “**Group Leader**”) must have, and is taken by us to have, the authority to do so on behalf of all the other people covered by the booking. Where “you” or “your” is used, this means the Group Leader and all people covered by the booking, jointly and severally. By signing any of our contract documents or paying the initial deposit, you are deemed to have read, understood, agreed to and have accepted Our Terms and Conditions and all other booking terms as may be specified in writing by us.

### 2. YOUR BOOKING PRICE

The prices for our services are in New Zealand Dollars. Prices are accurate at the date of publication. Once you have made your booking and paid a deposit of 50% per booking, the cost of your booking will not normally be subject to any change. However, we reserve the right to increase/surcharge or decrease prices, due to variations in service charges, fuel or fluctuations in exchange rates used to calculate the cost of your Charter, but any such changes would need to be agreed to by you in the contract documents we send you. The balance of the price of your booking must be paid at least 14 days before your booking date or if it is booked less than 15 days prior to the departure date, upon making the booking. If the balance is not paid on time, we may cancel your arrangements and retain your deposit and all amounts paid by you at that time. Please make bank transfer/ automated payment on receipt of booking invoice. Although we make all reasonable efforts to keep rates current on our website, they may not always be correct due to seasonal and other changes. The prices stated in our invoice which you agree to will prevail.

**Important:** 10% of the entire booking price shall be non-refundable for all bookings regardless of circumstances. The remaining provisions of Our Terms and Conditions may also allow us to retain other payments made by you.

We recommend that you obtain the best possible independent travel insurance for all bookings. For clarity:

- Our designated (or approved in writing) skipper must be the skipper for the agreed boat for each boat charter.
- You are solely responsible for all timely travel to and from the booking departure location (usually in Warkworth, Auckland, New Zealand) and for all your accommodation and other charges not expressly agreed in writing by us as part of your booking. Any expenses incurred relating to changes are at your own cost.

- Vessel berthage locations (pick-up/drop-off) points are not guaranteed and may change at any time or at late notice. We will do our best to assist with these unpredictable issues, however any costs associated with transferring guests to and from the boat is the Group Leaders responsibility and expense.

### 3. IF YOU CHANGE YOUR BOOKING

If, after our confirmation invoice has been issued, you wish to change your booking arrangements in any way, we will use all reasonable efforts to try to make your desired changes, however it may not always be possible, in which case you will remain liable to us under your agreed booking terms. Any request for changes to be made must be in writing and signed by the Group Leader. It is your responsibility to check whether any insurance you hold will cover any changes or increased costs resulting from a change. Requests for changes to your booking should be sent to [dive@nzdiving.co.nz](mailto:dive@nzdiving.co.nz).

Any modifications to catering plans or Dietary requirements, or guest numbers must be received within five days before booking date and may involve a modification of cost. If made late, we reserve the right to invoice you for our additional administration-related or other applicable costs and charges.

### 4. IF YOU CANCEL YOUR BOOKING

You may cancel your arrangements at any time but subject to all terms agreed with us. Written notification of cancellation from the Group Leader must be received at our offices. Cancellation will be effective on the date it is received by us. Cancellation charges are payable as set out in this clause 4 (“**Cancellation Charges**”). It is possible that other third-party cancellation charges may apply for bookings including Other Events as a result of the other contract terms referred to in the first paragraph above.

<u>Period before departure within which notice of cancellation or major change is received by us</u>	<u>Amount of charge</u>
15 + days	50% of total booking cost (deposit only)
14 days and under	100% of total booking cost if cancellation is made after supplies have been purchased (usually 48-60 hours)
Special Events	All deposits and all other amounts paid to us are non-refundable if you simply elect to cancel

*Note: If the reasons for your cancellation are covered under the terms of your insurance policy, you may be able to reclaim these charges.*

All payments to us are non-refundable except in the instance of one of the following:

- We agree in writing that a deposit is refundable; or
- Clause 5 a) below applies and we, acting reasonably, decide to offer a refund; or
- If the vessel or Other Event booked with us becomes unfit for the booking (e.g. in the case of a mechanical breakdown or other loss of public charter rights), as reasonably determined by us, or where there is a postponement of the charter day by us which is not caused by you and is not covered by clause 5 below, and in any such case we may refund all or a portion of your payments made to us, as is reasonably applicable in the circumstances, subject to such refund being full and final regarding any and all claims between you and us.

**Note that** under no circumstances will 10% of your total booking fee (paid or due) be refunded to you.

## **5. IF WE CHANGE OR CANCEL YOUR CHARTER**

- a. The arrangements for bookings can sometimes be made many months in advance. As a result, it is possible that changes or cancellations may need to be made. We reserve the right to make such changes or to cancel the booking should that become necessary, for example (and without limitation) if the boat becomes unavailable for any reason beyond our control. Most changes (if required) will be minor, and we will advise you of them as soon as possible. We will do all we reasonably can to avoid cancelling your arrangements less than 15 days before your departure date. However, and subject to clause 5 b) below, if we are unable to provide the booked arrangements and have had to cancel them before the booking is due to start and through no fault on your part, you can either:
- Accept our offer of a replacement booking (subject to availability and a variation of boat and rates), or
  - Accept our reasonable refund offer based on the circumstances (and any acceptance by you of any such refund shall be deemed to be in full and final settlement of all claims between you and us for that or those bookings).
- b. No refund or other compensation will be paid, and nor will a replacement booking be offered where the change or cancellation is either caused by you or is due to any unforeseeable and unusual circumstances beyond our control and includes (but is not limited to) all Acts of God, war or threat of war, riot, civil strife, industrial dispute, unavoidable technical problems with transport (including any vessel, vehicle or craft), closure or congestion of airports, terrorist activity, natural or nuclear disaster, fire and adverse conditions, earthquakes, Tsunamis, hurricanes, tornados, storms, disease, epidemic or biosecurity issue, or any change to or cancellation of any Event, whether weather related or for any other reason.

Despite the above, if your booking is cancelled by us as a result of a skipper or operator decision due to weather conditions, a 'Rain Check' (replacement or postponed charter) may be offered subject to availability. No refund will be made.

- c. If your boat charter is unable to proceed for any reason but the food and other catering requirements ordered by you are unable to be cancelled (due to being part-prepared or otherwise), then it shall be your sole cost and related liability.

## **6. BOOKING TERMINATION AND INDEMNITY**

You agree to accept responsibility for the proper conduct of yourself and any members of your group. We reserve the right in our absolute discretion to terminate without further notice (and at your cost and loss) the booking arrangements of any client who refuses to comply with the instructions or orders of our Skipper, staff, or other responsible persons, or whose behaviour or competence in our opinion is likely to cause distress, damage, danger or annoyance to the crew, other customers, staff, any third party, any person or to property. Upon such termination our responsibility for your booking ceases and we shall not be liable for any extra costs incurred by you. You agree to be responsible for and to replace or make good any damage to us, the operator, or our affiliated third-party suppliers caused by any of the guests of your booking. The skipper or operator shall be responsible for the running of the vessel, vehicle or Other Event and for the safe navigation of the vessel, vehicle or Other Event and the guests will abide by his or her decisions about sailing, navigating, anchorage, locations for activities and the like. Use of any illegal substances on the booking will result in instant termination of the booking, forfeiture of all monies paid and possible criminal charges from the New Zealand Police if we choose to lodge a complaint (which by law we may be required to do).

## **7. LIABILITY AND RISK**

You must ensure that you and any members of your group are aware of the risks that may arise from your booking. Activities may include (subject to the express terms of your booking) general boating and swimming, fishing, snorkelling and scuba diving, and other sporting and other water activities. You and all members of your group must be competent to use equipment required for any such activity and exercise all due care and attention when doing so. You and your group engage in activities and the use of sporting equipment entirely at your own risk and we shall not be liable in the event of injury or

death resulting from any such activity. We strongly recommend that all persons have full insurance covering any injury they might suffer, including medical treatment cover, before undertaking any such activity.

In cases of a Dive Charter where the Dive charter is arranged through a third party the Group Leader and all members of the group must assume the risk for any Scuba Diving, sporting and general boating, swimming, fishing, snorkelling, and water activity or other risks, in accordance with the third party's terms and conditions and we shall have no liability whatsoever in respect of any such activity.

**Important:** In no event or circumstance will we be liable to you:

- for any amount which exceeds that dollar amount (less tax) which you pay to us in relation to your booking with us; or
- for any indirect or consequential loss, including without limitation, all connecting travel costs, accommodation costs, meals costs or other wider travel-related costs or losses.

If your booking is for business purposes, then you agree that the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 are excluded from our contract with you to the fullest extent permitted by law and that you accept this as being fair and reasonable in the circumstances. All other laws that would otherwise be implied (including regarding the Contract and Commercial Law Act 2017) are also excluded from our contract with you to the fullest extent permitted by law.

## 8. DESTINATIONS

The course of the vessel or vehicle taken during the booking is at the sole discretion of the Skipper or operator in conjunction with Maritime Law, Local Harbour By-Laws and Tour Operators Law. No guarantee is given or implied by New Zealand Diving Limited Ltd that travelling to a destination is possible, but all reasonable efforts will be made to meet destination requirements.

## 9. ALCOHOL & DRUGS

The operator of each vessel will not provide or sell Alcohol. The group may bring Alcohol on board for personal consumption and must not sell Alcohol to any other member of the group. No intoxicated person shall be served alcohol. The Skipper or operator may use his/her discretion to prohibit intoxicated persons from boarding vessels or partaking in any Other Water Event (Scuba Diving) or may remove such persons once they are on board. The Skipper or operator may issue instruction that intoxicated persons are no longer to consume alcohol. **Alcohol is not allowed to be consumed while participating in in-water activities or operating machinery. Under no circumstances will drugs be allowed onboard unless for medical reasons and can be proved as such.**

## 10. IF YOU HAVE A COMPLAINT

If you have a problem during your booking, please inform a relevant member of our staff or crew member immediately, who will endeavour to resolve the matter. If your complaint is not resolved locally, you will have 14 days after your booking to follow the matter up in writing to our Company [dive@nzdiving.co.nz](mailto:dive@nzdiving.co.nz), giving your booking reference and all other relevant information. After that 14-day period you agree to not raise any further claim or dispute with us. It is strongly suggested that you communicate any problem to crew or staff without delay and complete a report whilst at the base.

If you fail to follow this simple procedure, we will have been deprived of the opportunity to investigate and rectify your complaint whilst you were on the booking, and this may affect your rights under this contract.

We endeavour to resolve any client issues as amicably as possible. However, disputes to do with this contract which cannot be settled amicably may (if you wish) be referred to Mediation in Warkworth Auckland in English, with each party bearing their own costs and a half share of the Mediator's costs. If the dispute is not resolved at Mediation, then either party may refer the dispute to Arbitration in Auckland in English, before an independent Arbitrator agreed to by both parties, with each

party bearing their own costs and a half share of the Arbitrator's costs. You may not commence any other form of legal proceedings against us. We may commence any other form of legal proceedings against you if you owe us money.

### **11. Governing Law & Assignment**

Our Terms and Conditions and all contract terms with you shall be governed by New Zealand Law. The parties accept the non-exclusive jurisdiction of the New Zealand Courts.

You may not assign your rights or obligations under Our Terms and Conditions and all contract terms with you unless pre-approved in writing by us, which may be withheld at our discretion. We may assign all or any of our rights or obligations under Our Terms and Conditions and all contract terms with you, to any purchaser of our business as a going concern, without need for your prior consent.

Our Terms and Conditions and all contract terms with you (including our invoice and related terms) constitute the entire contract terms between you and us for your intended booking. You agree that no other terms apply to your booking unless expressly stated as being applicable within Our Terms and Conditions and all contract terms with you.

### **12. Memorandum of Understanding.**

All parties will agree to and sign a memorandum of understanding which will define the areas of responsibility for each party. It will be the responsibility of third party groups to confirm that their members are sufficiently qualified, experienced & that the equipment used is suitable for the activity to be undertaken.

### **13. Client agrees to the terms and Conditions.**

By purchasing our events, dive charters and dive courses you are accepting our terms and conditions.

These are fully available to download from our website prior to any purchase, see [www.nzdiving.co.nz](http://www.nzdiving.co.nz)