

Coach Charter Terms and Conditions

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1. DEFINITIONS

- 1.1. In these Terms and Conditions the following words and phrases will have the following meanings unless inconsistent with the context:
- 1.2. "Agreement" means any agreement between Johnston's and the Customer for the purchase of the Services as set out in clause 2.
- 1.3. "Booking Confirmation" means an acceptance by Johnston's in writing of an Order.
- 1.4. "Business Day" means any day of the week other than Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Christmas Day, Boxing Day, New Year's Day, the day after New Year's Day and provincial holidays.
- 1.5. "Coach" means the vehicle provided by Johnston's to the Customer in accordance with clause 4 of this document.
- 1.6. "Coach Company" means any third party provider contracted by Johnston's to provide the Services on its behalf to the Customer.
- 1.7. "Customer" means the person, company or entity specified on the Booking Confirmation.
- 1.8. "Driver" means the driver that Johnston's has employed or contracted with to operate the Coach for the Customer, in accordance with the Terms of the Agreement.
- 1.9. "Johnston's" means Johnston's Coachlines Limited of 64 Westney Road, Mangere, Auckland, New Zealand.
- 1.10. "Order" means an order for the Services made by the Customer in writing.
- 1.11. "Services" means the services to be provided by Johnston's to the Customer as set out in the Booking Confirmation ..
- 1.12. "Special Terms" means the special terms appended to this document (if any). The terms outlined in any authorised Special Terms document override any conflicting terms in this document.
- 1.13. "Terms" means the terms and conditions set out in this document (including the Special Terms) and an Order which is accepted by Johnston's in writing.
- 1.14. "Tour Director" means the Customer's tour director leading the group of passengers on their prescribed tour.
- 1.15. "Quotation" means any quotation given by Johnston's to the Customer for the provision of the Services.

2. AGREEMENT

- 2.1. The Agreement will be upon these Terms (and any Special Terms if applicable) and shall exclude all other terms and any previous oral or written representations.
- 2.2. The Agreement is formed when an Order is accepted by a Booking Confirmation. Each acceptance in writing of a Quotation will be deemed to be an Order.
- 2.3. Except as otherwise provided in this document, the Terms of the Agreement may only be varied or amended in writing signed by both Johnston's and the Customer.
- 2.4. Each Quotation is given on the basis of information provided by the Customer. The route used will be at the discretion of Johnston's unless a specific route has been specified by the Customer in writing.

3. SERVICES

- 3.1. The Services will be as set out in the Order and the Booking Confirmation and/or Special Terms.
- 3.2. Johnston's may vary the Services at its discretion:
 - 3.2.1. To conform with any relevant safety or other statutory or regulatory requirements; or
 - 3.2.2. In any manner which does not materially affect the quality or performance of the Services.
- 3.3. Where Johnston's arranges ancillary facilities such as meals, ferries, admission tickets or any other services provided by another supplier (other than the Services) it does so on behalf of the Customer. Any terms and conditions imposed by such other supplier shall be binding on the Customer as if it had directly contracted such services.
- 3.4. The Customer is responsible for the actions and decisions of all the passengers using the Services.
- 3.5. The Customer shall ensure:
 - 3.5.1. A high standard of behaviour of all passengers at any time during the provision of the Services and that passengers adhere to all instructions of the Driver;

- 3.5.2. That no passengers shall smoke, consume alcohol or consume food on the Coach, unless agreed in writing by Johnston's;
- 3.5.3. That no animals may be carried on the Coach without prior written agreement from Johnston's; and
- 3.5.4. That all passengers adhere strictly to the collection times set out in the Booking Confirmation.
- 3.6. The Coach is subject to restrictions in respect of luggage for safety reasons. Johnston's shall be entitled to determine in its sole and absolute discretion, as to whether and to what extent passenger luggage and property is carried. The Customer shall notify Johnston's in advance of the tour of any specific requirements in respect of passenger luggage and property, and Johnston's shall use its best endeavours to comply with those requirements.
- 3.7. Johnston's shall transport luggage and property of the passengers and the Customer on the understanding that Johnston's will take reasonable steps to avoid loss or damage. Notwithstanding this, the Customer acknowledges that, to the extent permitted by law, the transport of the luggage and property is at the Customer's risk (except if loss or damage of the property occurs due to Johnston's gross negligence while the property is in transit or being loaded or unloaded from the Coach {see ([Carriage of Goods Act 1979](#))}) and the Customer shall insure the property accordingly. The Customer shall notify Johnston's if any particular steps are required to be taken to safeguard property and acknowledges that it is its responsibility to minimize risk of loss when the property is left unattended.

4. COACH

- 4.1. Johnston's will provide the customer with a Coach of the type specified in the Booking Confirmation or Special Terms.
- 4.2. Johnston's will use its best endeavours to provide the Coach free of mechanical and cosmetic defects, subject to reasonable wear and tear.
- 4.3. Johnston's will ensure:
 - 4.3.1. That the Coach is in place 15 minutes prior to the scheduled departure time, or as specified in the Booking Confirmation;
 - 4.3.2. That the Coach is fitted with a current and fully stocked first aid kit.
 - 4.3.3. That the Coach is presentable during the tour. This includes but is not limited to cleaning of windows and floors. The Customer acknowledges that due to local environmental laws, washing the exterior of the Coach may not be permitted in all locations. However, this will be attended to whenever appropriate at the discretion of the Driver.

5. DRIVER

- 5.1. The Driver will have a valid driver's license, maintain a logbook of the driving hours and will drive in accordance with the relevant New Zealand laws.
- 5.2. Johnston's will ensure that the Driver:
 - 5.2.1. To the best endeavours of both Company and Driver, is familiar with the Customer's itinerary and route
 - 5.2.2. Wear the prescribed Johnston's uniform every day of the tour where he/she is required to drive for the Customer or as otherwise agreed in the Special Terms if applicable
- 5.3. Johnston's will be responsible for the remuneration of the Driver.
- 5.4. The Customer is responsible for providing meals and accommodation for the Driver while on tour, or an allowance for meals and accommodation, as more particularly specified in the Booking Confirmation or Special Terms.
- 5.5. If the Tour Director deems a Driver to be unsuitable for operating any tour, Johnston's will use its best endeavours to achieve a solution which is acceptable to the Customer (acting reasonably), with the priority being placed on ensuring the passengers a safe and enjoyable tour. This may include but will not be limited to removing the Driver from the tour at the next appropriate point.
- 5.6. The Driver is responsible for the safe operation of the Coach. The Driver will not follow the instructions of any Customer's representative (or any other person) if he or she believes that following such instructions will endanger the safety of the passengers, cause damage to the Coach or cause Johnston's to be in breach of the Agreement.

6. TOUR DIRECTOR

- 6.1. The Tour Director will ensure that the passengers are aware of local laws regarding the compulsory use of seat belts where fitted.
- 6.2. The Tour Director and the passengers will not stand in the Coach while it is moving unless it is to visit the on-board rest room. This includes standing whilst addressing the passengers.

7. COACH SERVICE INTERRUPTION

- 7.1. In the event of a Coach service interruption, Johnston's may call upon other operators, with the consent of the Tour Director (such consent shall not be unreasonably withheld), to effect the timely transportation of passengers with the aim of minimizing delay, interruption to the itinerary and inconvenience to the passengers.
- 7.2. Johnston's will use its best endeavours to ensure passengers are returned to the contracted standard of coach at the earliest possible time.
- 7.3. Notification will be provided to the Customer as soon as practicable after the event and in any case no later than 24 hours following the event.
- 7.4. There will be no additional cost to the Customer for the provision of the additional coach required to effect the transportation of the passengers due to failure of service or otherwise on the part of Johnston's.
- 7.5. The Tour Director shall, particularly in remote locations, consider any assistance that is offered at the time by other operators regardless of standard of vehicle, in order to achieve the aims stated in 7.1 above.
- 7.6. On occasion, a Johnston's vehicle with tour passengers may be called upon to assist with the urgent transport of stranded passengers of other operators or travelling on another Johnston's Coach. The Tour Director will be consulted but the final decision on whether to transport the stranded passengers will be at the discretion of the driver.

8. PRICE, PAYMENT AND CANCELLATION

- 8.1. The price for the Services will be as set out in the Booking Confirmation and is exclusive of:
 - 8.1.1. All parking charges and road tolls;
 - 8.1.2. Any services required by the Customer to be provided which are not included in the Services.
- 8.2. Johnston's may vary the price for the Services at its discretion:
 - 8.2.1. Following any changes in the Order made at the request of the Customer and agreed to by Johnston's;
or
 - 8.2.2. To comply with the requirements referred to in clause 3.2.1.
- 8.3. Once a Booking Confirmation is issued, the deposit specified in the Booking Confirmation is payable immediately. Any deposit is non-refundable.
- 8.4. The Customer shall pay for the Services in full (less the deposit already paid) and in cleared funds no later than 7 business days prior to the performance of the Services. All payments will be made in New Zealand dollars.
- 8.5. All payments made by the Customer under the Agreement shall be made in full without set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding.
- 8.6. Johnston's may apply any payment received from the Customer towards payment of any amounts outstanding, notwithstanding purported appropriation by the Customer towards any particular invoice or amount payable.

9. INSURANCE

- 9.1. Johnston's shall, at its own cost and expense, provide and keep in full force and effect, public liability insurance up to the amount of \$5,000,000 NZD.
- 9.2. See also 3.7, Carriage of Goods Act 1979.

10. LIABILITY AND INDEMNIFICATION

- 10.1. Johnston's will be liable to the Customer and its passengers for direct or indirect losses, costs, expenses, liabilities, injuries, damages, claims, demands, proceedings or legal costs and judgments suffered or incurred by the Customer as a result of any failure by Johnston's to comply with or perform its obligations under the Agreement, but only to the extent that such failure is caused by the gross negligence or recklessness of Johnston's. See also 3.7, Carriage of Goods Act 1979.
- 10.2. Johnston's hereby excludes to the fullest extent permissible in law, all express (other than those set out in the Agreement) or implied, statutory, customary clauses, representations and warranties which, but for such exclusion, would or might subsist in favour of the Customer.
- 10.3. The Customer agrees to indemnify and keep Johnston's indemnified from and against all direct and indirect loss, costs, expenses, liabilities, injuries, damages, claims, demands, proceedings or legal costs and judgments which Johnston's incurs or suffers as a consequence of or failure by the Customer to comply with or perform its obligations under the Agreement.

10.4. UNFORSEEN CIRCUMSTANCES

- 10.4.1. Notwithstanding anything contained in the Agreement, Johnston's will not be in breach of the Agreement or otherwise liable to the Customer in any manner whatsoever for any failure or delay in performing its obligations under the Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of Johnston's, including, but not limited to, traffic congestion, vehicle breakdown, emergency or act of terrorism, compliance with any law or regulatory requirement, accident, adverse weather conditions, strikes or other industrial disputes ("Unforeseen Circumstances").
- 10.4.2. If Johnston's performance of its obligations under the Agreement is affected by Unforeseen Circumstances:
 - 10.4.2.1. It will give written notice to the Customer as soon as reasonably practicable after becoming aware of the Unforeseen Circumstances specifying the nature and extent of the Unforeseen

Circumstances, and will at all times use its best endeavours to bring, if possible, the relevant event to an end and, whilst the Unforeseen Circumstances are continuing, mitigate their severity; and

10.4.2.2. It will refund to the Customer the balance of any monies paid to it by the Customer after deduction of all non-refundable costs and expenses incurred by Johnston's plus Johnston's reasonable expenses.

11. GENERAL

- 11.1. The Agreement is personal to the Customer who may not transfer all or any of its rights or obligations under the Agreement without Johnston's prior written consent. Johnston's may transfer and/or sub-contract all of its rights or obligations under the Agreement without the consent of the Customer, provided that Johnston's shall remain liable for the performance of the obligations under the Agreement.
- 11.2. If any clause or part of the Agreement is found by any court to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Agreement and will be ineffective without, as far as is possible, modifying any other provision or part of the Agreement and this will not affect any other provisions of the Agreement which will remain in full force and effect.
- 11.3. No waiver of any breach, or failure to enforce any provision, of the Agreement at any time by any party in any way affects, limits or waives the right of such party thereafter to enforce and compel strict compliance with the provisions of this Agreement.
- 11.4. The Agreement shall be governed by and construed in accordance with New Zealand law and subject to the jurisdiction of the New Zealand courts.