

# Terms & Conditions for Australia Zoo Whale Encounters

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## **WARNING**

**THE PARTICIPANT HAS READ THIS DOCUMENT AND UNDERSTANDS THAT BY ELECTING TO PROCEED WITH THE ONLINE PURCHASE OF A TICKET:**

- \* YOU HAVE ENTERED INTO A CONTRACT WITH THE PROVIDER; AND**
  - \* YOU AGREE TO ABIDE BY THESE TERMS AND CONDITIONS; AND**
  - \* YOU HAVE NOT RELIED UPON ANY REPRESENTATION BY THE PROVIDER IN ENTERING INTO THE CONTRACT; AND**
  - \* AS A TERM OF THE CONTRACT, IMPORTANT LEGAL RIGHTS AND ENTITLEMENTS ARE WAIVED.**
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In consideration for the provider providing the activity, the participant agrees to the following terms and conditions:

### **Arrival Time**

Australia Zoo Whale Encounters depart from Mooloolaba Wharf at 10.00am daily (sharp) we strongly recommend participants arrive at the Mooloolaba Wharf no later than 30 minutes prior to the programmed departure time. We also recommend that once participants arrive they do not walk off/away (including local shops) from the Whale Watching loading area at Mooloolaba Wharf.

### **Whale Sighting Guarantee**

Australia Zoo guarantees whale sightings during your encounter. If no whales are sighted during your encounter we will gladly re-book you onto another Australia Zoo Whale Encounter Cruise free of charge, provided you make the booking within 14 days of the original cruise (subject to availability) and before the end of the current whale season.

### **Customer Satisfaction**

The provider and its staff will make every reasonable endeavor to ensure you have an enjoyable experience, however in the unlikely event that you have not had a whale of a time, you should contact Australia Zoo Whale Encounters in

writing detailing your situation. Please include your contact details & booking details (e.g. ticket number, date of travel). We request that all initial communication be received by us within 30 days of the planned whale encounter.

The provider and the participant agree that any guarantee, warranty, condition representation or term (implied or otherwise) that the participant will have an expected or any level of satisfaction or enjoyment whilst participating in the activity are hereby expressly excluded from the contract.

### **Estimated Return Time**

Due to the nature of the operation we are only able to provide an estimated return time of the vessel. The scheduled return time for the vessel is 2.30pm but at our sole discretion we reserve the right to shorten or lengthen the duration of the whale encounter for any reason whatsoever. Australia Zoo Whale Encounters accept no responsibility for inconvenience caused by changes to this estimated / scheduled return time.

The participant shall not be entitled to any form of payment, compensation or reimbursement whatsoever for any inconvenience caused by the late or early return of the vessel.

### **Cancellation Policy**

After we have confirmed your Whale Encounter Cruise, you may change or amend your booking up until 7 days prior to the original departure date (subject to availability) without incurring any administration fees. If you change or amend your booking less than 7 days prior to departure a \$25.00 administration fee would apply.

All cancellations will attract a \$25.00 administration fee per booking.

We reserve the right to change, alter or cancel your booking in accordance with operating requirements or circumstances beyond our control. All Whale Encounter Cruises conducted by the provider are subject to weather conditions and a minimum number of bookings. If a cruise is cancelled by the provider for any reason, all attempts will be made to re-book you on another Whale Encounter Cruise or a full refund will be made.

In the event that you are unable to join or commence an Australia Zoo Whale Encounter due to illness or injury, we recommend you obtain a medical certificate which identifies that you were or will be unable to participate in the cruise due to illness or injury and supply that certificate to us within 30 days of the original date of departure and all attempts will be made to re-book you on another Whale Encounter Cruise or a full refund will be made.

Otherwise and in all other circumstances no refunds will be made for any absence ("no show") for a Whale Encounter Cruise. Any waiver of this no refund or cancellation policy is at the complete discretion of the provider and without prejudice or waiver to any condition under this agreement.

## **Photographs / Pictures**

Photographs and images contained in any advertisement, brochure or this website should be used solely as an indication of the type of tour/experience provided. Actual features, facilities and inclusions may vary according to availability and seasonal variation.

You agree and consent to the provider (and its subsidiaries and related bodies corporate and or their service providers) having the right to use and/or include any photographic, video, audio and other visual portrayals of you and if this agreement is entered into on behalf of an infant participant/s, the infant, in any trade, advertising, sales, publicity commercial or otherwise, without any liability or compensation whatsoever to the participant or the infant participant. All rights and title to the photographs, images and content remain the absolute property of the provider.

## **Luggage**

Each participant is limited to one small soft carry on bag weighing no more than 5 kilos. Onboard baggage is limited to normal day use / personal effects. For your security and public liability issues we will not be accept, hold or store wheeled, medium or large travel luggage onboard the boat during your encounter. You must not bring aboard any weapons, explosives or inflammable materials. Operator will not be held liable for any loss/damage to your personal property and effects.

## **Credit Cards**

If you elect to pay a deposit or full payment with a credit card we do not charge any additional fees for this service.

## **Voucher Security**

Tickets purchased over the internet will allow you to print out or receive emailed copies of your tickets. Please take care not to lose these as we are unable to provide replacement copies. In the rare event that a participant should lose a ticket, they you will be required to provide photographic identification to the Whale Encounter staff prior to boarding the vessel. Due to privacy regulations we are unable to advise you or any person of details on our participant manifest.

## **Tour Inclusion**

Australia Zoo Whale Encounters does not include transfers to and from the Wharf.

## **Smoking Policy**

In compliance with State laws and our strict safety regulations, the Australia Zoo Whale Watching vessel is 100% non smoking.

## **Beverage Policy**

No participant may consume any alcoholic beverage aboard the vessel unless it has been sold and served by the staff aboard the vessel. The provider, in its sole discretion reserves the right to refuse entry onto the vessel to any person who the provider reasonable believes to be under the influence of a drug or alcohol. Any such refusal to board will result in the immediate forfeiture/cancellation of the participant's ticket and the participant shall not be entitled to a refund.

## **Animals**

No animals of any kind are allowed to board the vessel. (Visually impaired assistance animals are exempt.)

## **Currency**

Prices listed are in Australian Dollars (\$AUD) and include GST (good & services tax).

## **Special Assistance**

Each participant has a responsibility to inform us of any disability requiring special attention. This should be reported to Australia Zoo Whale Encounter staff as early as possible (e.g. during the reservation process) to allow us to make reasonable attempts to accommodate any special needs required.

## **Young Travelers**

Infant participants who are 14 years of age and under must be accompanied by a supervising adult.

The ticket to engage in the activity must be purchase for and on behalf of the Infant by the infant's parent or guardian in which case the parent or guardian enters into this agreement for and on behalf of the Infant and does hereby warrant and guarantee the performance of these terms and conditions on behalf of the infant participant.

The parent and/or guardian does hereby indemnify the provider, its directors, employees agents and contractors (and including any subsidiaries and related bodies corporate of the provider and their respective employees agents and contractors) against all expenses, loses, liabilities, damages and legal costs that it or they sustain or incur by reason of any existing or future legal claim or action by or on behalf of the infant participant relating to any harm, injury (including serious injury, paralysis, brain injury or death) or loss incurred or suffered to the infant participant whilst participating in or in consequence of participating in the activity.

## **Safety**

The participant will exercise due care and control for their own safety and for that of their family members (including infants) under their direct control and otherwise not unlawfully interfere with other contractual entrants participating in the activity and/or the provider's staff.

The participant acknowledges that the activity occurs "out doors" and they will take appropriate steps to protect themselves and family members (including an infant participant) from the damaging affects of the sun. The provider recommends the use of protective clothing including broad rimmed hat, sunglasses and sun cream whilst participating in the activity.

The participant agrees to comply with all existing Commonwealth, State and local laws/by-laws, and/or policies as published or announced by the provider when participating in the activity.

The participant agrees to follow ALL lawful demands, requests and directions of the provider and its staff.

### **Warning/Waiver/Release/Indemnity**

The provider, its employees and agents warn the participant that participating in the activity carries risks that are potentially harmful to the participant. The participant is specifically warned of the following circumstances which may give rise to an increase in the risks of personal harm or loss:

- The activities take place on the open ocean which can be unpredictable. The vessel is subject to ocean and weather conditions which are variable and can change. This includes but is not limited to storm, tempest or tsunami;
- The vessel will be passing through a "wave zone" upon leaving and returning to port on each occasion;
- The vessel has various uneven and types of surfaces and these surfaces may become slippery when wet;
- The vessel will operate on the open ocean for the purpose of the activity, the swell of the ocean will provide for a constantly moving and unpredictable platform to stand;
- The vessel operates in and around busy shipping areas and commercial shipping channels;
- The activity is an "out doors activity" and the participant will be subject to the harmful affects of the sun;
- The participant will board and depart the vessel via the use of an extendable platform; and
- Acts of terrorism or piracy.

Because of the risks, you are and will be exposed to the possibility of suffering a personal injury (including serious injury, paralysis, brain injury or death).

In consideration for permitting the participant to engage in the activity, the participant (together with their spouse, de-facto partner, estate, heirs, assigns

and representative for whom the participant enters into this agreement as agent and trustee) agrees:

- (a) That the participant engages in the activity at their own risk; and
- (b) That the provider (its subsidiaries and related bodies corporate), its directors, employee's agents and contractors shall not be liable for any harm {as that term is defined by the *Civil Liability Act 2003 (Qld)*} to the participant as a result of:
  - (i) A breach of an express or implied warranty, term or condition that the activities will be rendered with reasonable care and skill; or
  - (ii) A breach of a warranty implied by section 74 of the *Trade Practices Act 1974 (Cth)*; or
  - (iii) The negligence or default of the provider or its employees agents or contractors under the general law; or
  - (iv) Any breach of contract and or breach of statute; or
  - (v) The materialization of any risks; and
- (c) Not to make any claim or bring any legal action against the provider (its subsidiaries or related bodies corporate), its employee's agents and contractors on account of any liability excluded by the preceding subparagraph or howsoever arising from or in consequence of engaging in the activity; and
- (d) To releases and forever holds harmless, the provider (its subsidiaries and related bodies corporate) its directors, employee's agents and contractors, from all claims actions and demands arising out of or in connection with engaging in the activity, and for all loss and damage arising out of any such claims actions and demands or any other claim at law or in equity or otherwise; and
- (e) To indemnify the provider (its subsidiaries and related bodies corporate) its directors, employee's agents and contractors (and each of them) against any claim, expenses, loses, liabilities, damages and legal costs that it or they sustain or incur by reason of any existing or future legal claim or action commenced by or on behalf of the participant relating to any harm, injury (including serious injury, paralysis, brain injury or death) or loss incurred or suffered to the participant whilst participating in or in consequence of participating in the activity; and
- (f) That this disclaimer may be pleaded as an absolute bar to any proceedings instituted by the participant (or the participant's spouse, de-facto partner, estate, heirs assigns or representative) against the provider (its subsidiaries or related bodies corporate) its directors, employee's agents and contractors.

## Representations

The participant agrees and warrants that they have entered into the agreement of their own volition after having read and understood these terms and conditions and further, has not relied on any representation made by or on behalf of the provider in doing so.

## Definitions

In this Terms and Conditions document:

**“activity”** or **“activities”** means participating in the activity of a Whale Encounter Cruise conducted by the provider and includes, whale watching, cruising and associated activities (including boarding and departing the vessel).

**“infant”** or **“infant participant”** means the participant engaging in the Whale Encounter Cruise conducted by the provider who is 14 years of age or under.

**“you”**, **“your”** or **“participant”** means the purchaser of a ticket to participate in a Whale Encounter Cruise.

**“we”**, **“us”** or **“provider”** means Australia Zoo Adventure Cruises Pty Ltd (ACN 104 746 723).

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