



SERVICE TERMS & CONDITIONS

Entered into by and between Scuba Diving and Outdoor Adventures (Pty) Ltd also known as Kelp Divers (Hereinafter "Kelp Divers") (the Service Provider) and The Customer. This document applies to all Kelp Divers customers which make use of Kelp Divers' goods and / or services and cannot be changed nor altered.

1. PARTIES

1.1 Scuba Diving and Outdoor Adventures (Pty) Ltd A company with limited liability duly incorporated in terms of the Companies Act of South Africa, 71 of 2008, with registration number: 2020/799210/07, hereinafter referred to as "the Service Provider"; and

1.2 "The Customer" with the details as submitted via the Service Provider's website by the Customer, or as otherwise submitted by the Customer to the Service Provider in the form and on the documents as prescribed by the Service Provider from time to time. The aforementioned shall include but shall not be limited to the Indemnity, POPI Consent form and Maintenance Service Level Agreements prescribed and required by the Service Provider from time to time.

2. DEFINITIONS

2.1.1 "Customer Order Form" Shall mean any record and/or document in the manner and form as prescribed by the Service Provider from time to time, with the purpose of recording the Customer's order

and shall be deemed instruction the Service Provider of the Services and goods required by the Customer on the Customer's special insistence and request, whether such order is to be duly completed manually, digitally, telephonically or otherwise by the Customer. This definition specifically includes "data message" as defined in Chapter 1 of the ECT.

2.1.2 "ECT" Shall mean the Electronic Communications and Transactions Act, 25 of 2002.

2.1.3 "Fees" Shall mean the monies due to the Service Provider by the Customer as per the published on the Service Provider's pricelist and or website (www.kelpdivers.co.za) from time to time and/or as otherwise communicated to the Customer in writing from time to time, and which may be amended by the Service Provider from time to time upon notice to the Customer.

2.1.4 "Goods" shall mean the products listed and sold by the Service Provider on its elected media and / or platform of sale and shall include but not be limited to the Service Providers website (www.kelpdivers.co.za) and/or as otherwise communicated to the Customer in writing from time to time, and which may be amended by the Service Provider from time to time upon notice to the Customer.

2.1.5 "Services" Shall mean any one of the following or all the provision of the Discover Scuba Diving

Courses, Open Water Diving Courses and / or Advanced Open Water Diving Courses' accredited services advertised and provided by the Service Provider to the Consumer.

2.1.5 "Writing" Shall include but not be limited to hand written and data messages. Any requirement in this Agreement that a document or information must be in writing is met if the document or information is in the form of a data message, and accessible in a manner usable for subsequent reference.

3. PREAMBLE

3.1 WHEREAS the Service Provider is a registered PADI Dive Resort which offers a wide range of scuba diving courses from beginner to advanced as well as a Dive Shop which offers Goods and equipment for Scuba diving needs; and

3.2 WHEREAS the Customer is desirous to procure the services and/ or goods of the Service Provider;

NOW THEREFORE the Parties agree as follows:

4. RECORDALS

The provisions of the ECT shall be applicable to this Agreement and this Agreement shall be construed in such a way as to give effect to the definitions and enable and provisions of the Act.

5. COMMENCEMENT AND DURATION

This Agreement shall commence on the acceptance date of the Customer Order form by the Consumer and continue



thereafter subject to either Party's right to cancel the Agreement in terms of clause 9 hereof as it pertains to the delivery of goods and services.

6. SERVICES UNDERTAKINGS

6.1 The Service Provider shall provide the Services and Ancillary Equipment and/or Products used in relation to the aforementioned to the Customer in accordance with the terms and conditions hereof.

6.2 The Services shall commence on the date(s) stated in the Customer Order Form and will continue to be provided thereafter for the duration of the Agreement and / or until the services have been completed and delivered to the Customer.

6.3 The Service Provider undertakes to render the Services in accordance with Good Industry Practice and its registered accreditation with PADI.

6.4 The Service Provider shall further perform the Services in a proper and professional manner by suitably qualified personnel.

6.5 The Service Provider undertakes to use its reasonable endeavors to keep the Services available at all times.

6.6 Unless otherwise agreed by the Parties in writing, the Service Provider shall not provide any services other than the Services as defined herein and listed in the Customer Order Form or advertised on its Website.

7. GOODS UNDERTAKINGS

7.1 The Service Provider shall provide the Goods and Ancillary Equipment and/or Products used in relation to the aforementioned to the Customer in accordance with the terms and conditions hereof.

7.2 The Consumer acknowledges and understands that the Goods are subject to unique terms, specifications and conditions attached to each individual good. The onus shall be on the Consumer to ensure that they adhere to the specific and unique specifications, terms and conditions attached to each individual good, including but not limited to manufacturer specifications and product instructions tailored for proper and correct use of each good.

7.3 The Service Provider undertakes to use its reasonable endeavors to keep the Goods available at all times as advertised on its elected forum and website.

7.4 Unless otherwise agreed by the Parties in writing, the Service Provider shall not provide any Goods other than the Goods as defined herein and listed in the Customer Order Form or advertised on its Website.

8. GOODS, DELIVERY, GUARANTEES, WARRANTIES AND RISK

8.1 Risk shall pass to the Customer upon delivery of the Goods, notwithstanding the equipment being the property of the Customer or remaining the property of the Service Provider,

as the case may be in the circumstances.

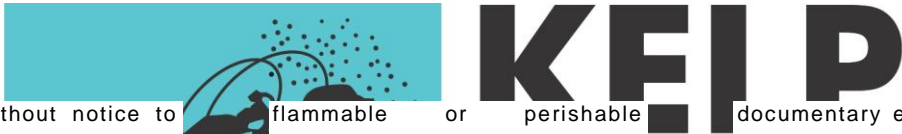
8.2 Delivery of the Goods takes place upon collection, either by the Client; Client's designated Courier Company or a courier company designated by the Service Provider at the Client's request.

8.3 The Service Provider uses external service providers for the transportation and delivery of Goods, the cost of which shall be for the Customer's account.

8.4 The company delivery notes signed or countersigned by the customer or the employee of the customer shall for all purposes be deemed to be accurate in all respects and binding on the customer.

8.5 The Service Provider may require the Customer to make the equipment for inspection at a time and place to be arranged by the Service Provider or its nominee. Should The Service Provider accept the equipment for repairs and maintenance it shall be deemed to do so as an agent on behalf of the manufacturer or local supplier of the equipment and The Service Provider shall not be liable for any loss, damage, destruction, theft, or negligent workmanship howsoever or by whomsoever caused.

8.6 Should the Customer fail to pay any monies due in respect of Goods or Services purchased, leased or loaned from The Service Provider then the Service Provider shall be entitled without prejudice to any other rights it may have at law



forthwith and without notice to suspend, interrupt or discontinue the Services or any part thereof.

8.7 Goods purchased through the Service Provider is guaranteed according to the terms and conditions of the manufacturer or its designated South African distributor. The Service Provider does not offer any guarantee on hardware unless explicitly stated in writing, detailing the exclusions and inclusions of such a guarantee. All guarantees and warranties are subject to the terms of the manufacturer. Manufacturer warranties do not cover the cost of onsite assessments, call-out fees, or any labour costs associated with the guarantee. The Service Provider, at its discretion, may bill the client for any hardware owned by the client that requires replacement or repair under the guarantee.

9. GENERAL USE AND TERMS OF RETURN AND / OR TERMINATION OF SERVICES AND GOODS

9.1 Due to the nature of our goods and services the Service Provider can only a limited undertaking for return of goods and cancellation of services.

9.2 The Service Provider's return policy is only valid for 30 (thirty) calendar days after issuance and payment and/ or purchase of the Customer Form.

9.3 Several goods are exempt for being returned and includes but shall not be limited to goods which are intimate and / or sanitary, hazardous or contains

flammable or perishable components.

9.4 The Customers attention is drawn to the Service Providers refund policy applicable to its goods and services which can be accessed on the Service Providers website at www.kelpdivers.co.za.

10. PAYMENT

10.1 In consideration of the Services and Goods provided, the Customer shall pay the Service Provider the necessary Fees, on the Payment Date(s), in the Currency, to its Nominated Account via electronic transfer.

10.2 In the event where the Currency is another currency that that in which the Provider normally does its business, then the exchange rate applicable to any amount due by either of the Parties to the other shall be the exchange rate between those two currencies on the date on which the amount becomes due.

10.3 The Service Provider may in its sole discretion, demand a deposit as security from the Customer prior to rendering the Services, which deposit shall not bear interest. The Service Provider may utilise this deposit at any time towards payment of any portion of its Fees or other monies due and owing to the Service Provider by the Customer.

10.4 Any accounting document provided by the Service Provider (monthly account statements, invoices, or other) shall be deemed *prima facie* proof of the amounts due and owing by the Customer and shall be sufficient

documentary evidence to obtain judgment to that effect.

10.5 Unless expressly otherwise agreed to in writing, all payments shall be made via electronic transfer to the Service Provider's nominated bank account, the details of which shall be forwarded to the Customer, and shall be made free of exchange, taxes, fees and charges.

10.6 In the event of any debit order returned unpaid or should any charge or credit card of the Customer be rejected for whatever reason, then the Customer shall be liable for an administration charge as may be levied by the Service Provider in respect of each such non-payment, including any bank charges incurred by the Service Provider as a result of the non-payment.

10.7 The Customer shall not be entitled, for any reason whatsoever, to withhold payment or any part thereof of any monies due in terms hereof.

10.8 The Fees due by the Customer to the Service Provider, shall exclude any taxes and/or levies due as a result of a requirement by any governmental organization (which shall include but not be limited to any VAT, importation tax, withholding tax and general sales tax) and all these taxes and/or levies, shall be paid by the Customer. The Service Provider is a registered VAT vendor in terms of the Value Added Tax Act, 1991. All invoices rendered shall include VAT at the standard rate.



10.9 The Customer acknowledges and agrees that it shall be liable for the transactional cost of any third party payment system provider in respect of payment of the Service Fees by way of electronic debit order. The Customer further acknowledges and agrees that any such instruction to a third party payment system provider shall constitute a separate transaction and agreement from this Agreement.

10.10 Prepaid or Top up shall mean paid in advance and cost will be deducted from the reducing balance of the amount prepaid.

11. PRIVACY CONSENT

11.1 The Customer provides his/her/its express consent to the Service Provider to process the personal information as defined in legislation, including identity verification in terms of the RICA Act, for purposes of preventing fraud and to send the personal information to third parties in order to provide services to the Customer, and also to send such information to foreign countries, when necessary, by electronic or other means for processing. The Customer acknowledges and understands that such countries may not have specific data privacy laws.

11.2 The Service Provider undertakes to treat the personal information confidentially and will not make disclosure thereof unless:

11.2.1 It is legally compelled to do so; and/or

11.2.2 It is in the public interest to disclose the personal information;

11.2.3 The Customer has given consent thereto.

11.3 Requests for Services are subject to the Service Provider's approval. Prior to entering into any agreement with the Customer, the Service Provider may investigate the Customer and may conduct such reasonably necessary checks to verify any information provided by the Customer. The Customer consents thereto and authorizes the Service Provider to conduct all reasonable credit checks and searches to establish his/her/its creditworthiness. The Customer agrees that the Service Provider may send and receive positive and negative information as may be required from time to time, to or from any credit bureau, government or similar agency.

11.4 The Service Provider will use the information of the Customer lawfully and that it will comply with all applicable laws. The Service Provider's Privacy Policy is published on www.kelpdivers.co.za. The Service Provider reserves the right to vary these terms and conditions at any time, without notice or reason. Such changes will be deemed to be accepted by the customer if the customer continues the use of the service, the obligation is therefore the customer to review these terms and conditions at regular intervals.

12. BREACH

12.1 In the event that the Customer breaches any

provision of this Agreement and fails to remedy such breach within 7 (seven) days' from written notice to this effect, including failure to make due payment in terms hereof, then the Service Provider shall be entitled, without prejudice to any of its other rights, to suspend the Goods and / or Services.

12.2 In the event that the Customer fails to remedy such breach within three (7) seven days after receipt of notice as such, the Service Provider shall be entitled to cancel this Agreement with immediate effect and without any further notice..