

MC CHAUFFEUR SERVICES ADELAIDE AND MC WINE TOURS

TERMS OF TRADE

The below terms comprise the contract between Michelle Cosmai trading as MC Chauffeurs Services Adelaide and MC Wine Tours (ABN 15 422 345 632) and the Client.

Interpretation

In this document the following words and expressions shall unless the context otherwise requires have the following meanings:

“Business” means and includes the businesses known as MC Chauffeur Services Adelaide and/or MC Wine Tours operated by Michelle Cosmai as sole proprietor (ABN 15 422 345 632), as the case may be;

“Client” means the utilising the Services;

“Confidential Information” means any non-public information provided by one party to these Terms to the other party, either verbally or in writing, where that information:

- Is sensitive in nature;
- Contains personal information;
- Contains any payment information, which for the avoidance of any doubt includes Credit or Debit Card details;
- Concerns any aspect of the business or affairs of a party; or
- Provided by a party in accordance with a Dispute Resolution process as defined in clauses 47 to 49 of these Terms.

“COVID-19 Pandemic” means the outbreak of the coronavirus known as COVID-19 that was categorized by the World Health Organisation as a pandemic on 11 March 2020;

“Passenger” means any person who utilises the Services with the Client or at the instruction of the Client. (To avoid doubt, the Client enters into these Terms as agent for any Passengers.)

“Terms of Trade” or **“Terms”** means this document;

“Services” means the services provided by the Business, which includes the facilitation of point-to-point transportation;

“Service Provider” means Michelle Cosmai;

“Service Provider’s Website/s” means the websites at the following addresses:

- <http://mcchauffeurservicesadelaide.com.au/>; and
- <https://www.mcwinetours.com.au/>;

“You”, “your” and **“yours”** refers to the Client and his/her Passengers using the Services.

Relationship

1. These Terms detail the agreement between you and the Business, governing your use of the Services, as requested by you.
2. Please read these Terms carefully before agreeing to them and using the Services. If you do not agree to these Terms, you must not use the Services.

Amendments

3. The Service Provider may amend these Terms from time to time by not less than 7 days’ written notice. Amendments will be effective upon the posting of the updated Terms on the Service Provider’s website/s. Your continued use of the Services after such posting, or after the expiry of the notice period (whichever is later) constitutes your consent to be bound by the amended Terms.

Registration

4. To access and use the Services you must register as a Client. By registering as a Client by phone or online, you confirm your acceptance of these Terms on your own behalf and on behalf of any other Passengers who utilise the Services with you. At this time these Terms will immediately form a binding legal agreement between you and the Business.
5. To register, you will be required to provide your contact details and other personal details to facilitate the proper provision of the Services.
6. To register you will, either at the time of registration or to pay a deposit or fee in accordance with clauses 11 – 13 of these Terms, be required to supply credit or debit card information unless other eligible payment method is agreed between you and the Service Provider.
7. To be eligible to register you must:
 - a. be 18 years or over; or

- b. be registered by a responsible adult and accompanied by a responsible adult if under the age of 16; and
- c. have a valid payment method; and
- d. agree to comply with these Terms and any requests from the Service Provider to provide accurate and valid information relevant to your use of the Services.

Capacity

- 8. A booking may be limited in capacity depending on the number of other bookings occurring at that time or on that day.
- 9. You warrant that you are aware of, and will comply with, any applicable capacity limits on the date that you seek to book.

Invoice

- 10. Upon your registration, the Service Provider will provide you with an invoice outlining the fees payable by you for the Services ("**the Services Fee**").

Fees and Deposit

- 11. The date on which you request the Services be provided to you will not be secured until a deposit of \$100 (or such other amount as is specified in the invoice) has been paid to the Service Provider. This payment will secure the date of the Services to be provided only.
- 12. Before full details are confirmed and a booking for the Services is finalised, payment in full of the fee for the Services, as invoiced by the Service Provider, must be paid.
- 13. The total fee may include other applicable charges such as airport carparking surcharges, booking fees, processing fees for split payments, any applicable Government point to point levy, or the costs of pre-purchased alcohol, tastings and lunch. Such fees will only be charged if included on the invoice provided to the client upon finalisation of the booking.

Pre-authorisation

- 14. Where you provide the Service Provider with credit or debit card details upon your registration or payment of a deposit or fee, you expressly authorise the Service Provider to put a pre-authorisation on your card in the amount specified on the invoice.
- 15. This preauthorisation may last for up to 7 days and will allow the Service Provider to recover additional costs post-Service if such costs are incurred under clauses 19 – 21 of these Terms in particular.

Liquor Licencing

- 16. The Service Provider is licensed to provide liquor to passenger's during the provision of the Services. The Service Provider, at her sole discretion, may require the Client and/or any Passenger to provide their ID for the purposes of determining their age before supplying them with alcohol.
- 17. The Service Provider may, in their sole discretion, refuse to provide the Client and/or a Passenger with alcohol or refuse to allow any person to enter their vehicle with alcohol supplied elsewhere.

Damage Fee

- 18. The Service Provider reserves the right to charge you a fee to recover costs for repair, replacement, cleaning, refurbishment or other costs incurred during your use of the Services that are in excess of normal 'wear and tear' damages. This may include, without limitation, costs incurred due to spillage, extending to spillage of food or beverages provided by the Service Provider, or physical damage to the interior or exterior of the Vehicle ("**Damage Fee**").
- 19. The Service Provider will obtain any applicable Damage Fee by accepting additional payment from the pre-authorized amount. If any amount remains on hold after payment of the full Services Fee and Damage Fee, this will be returned to you. If the hold amount is not sufficient to cover the Services Fee and Damage Fee, the Service Provider will issue another invoice to you to recover the balance. The Service Provider may take any such actions as is considered necessary, in their sole discretion, on failure to pay any such invoice, including without limitation the institution of debt recovery proceedings.

Waiting Fee

- 20. The Service Provider, in their absolute discretion, reserves the right to charge a fee where Services are booked for a certain time, the passenger fails to be available and ready at that time, and the Service Provider is kept waiting at the allocated location for any period exceeding 15 minutes with no reasonable explanation ("**the Waiting Fee**").
- 21. The Service Provider will obtain any applicable Waiting Fee by accepting additional payment from the pre-authorized amount. If any amount remains on hold after payment of the full Services Fee and Waiting Fee, this will be returned to you. If the hold amount is not sufficient to cover the Services Fee and Waiting Fee, the Service Provider will issue another invoice to you to recover the balance. The Service Provider may take any such actions as is considered necessary, in their sole discretion, on failure to pay any such invoice, including without limitation the institution of debt recovery proceedings.

Passenger Obligations

22. You agree that when you use the Services you will:
- a. Not act in any way that is aggressive or unsafe;
 - b. comply with all applicable laws, regulations and rules;
 - c. comply with these Terms;
 - d. if you arrange a ride on behalf of someone else, provide their name, location, phone number and any other information to identify that person and allow them to use the Services (and by providing this information you warrant that you have obtained their consent to arrange such ride and share such information with us);
 - e. unless otherwise agreed by the Service Provider, not arrange a ride on behalf of someone who is less than 16 years old unless they are accompanied by a responsible adult;
 - f. to comply with all applicable safety procedures required by law or recommended by governmental bodies in receiving the Service (including those relating to the COVID-19 Pandemic); and
 - g. not to use the Services for any illegal, fraudulent, or harmful purpose.

Child Seats

23. If you are registering with a Passenger who is a child that requires a child seat, or are registering on behalf of a Passenger who will be accompanied by a child that requires a child seat, then either:
- a. You (or the Passenger you are registering for) must supply and fit the necessary child seat securely into the Service Provider's vehicle, and you warrant that the child seat is compliant with Australian Safety Standards; or
 - b. You will notify the Service Provider of the requirement to organise a child seat at the time of registering your booking under clause 4, following which the Service Provider will organise the hiring and fitting of the child seat in compliance with Australian Safety Standards, and for which you will be charged an additional fee.

24. If the Service Provider arrives to collect you and you have failed to notify the Service Provider in advance in relation to a child seat as required by the preceding clause, then you acknowledge that:
- a. that child is not permitted to travel with the Service Provider, and you will need to make other arrangements at your cost; and
 - b. all applicable Service fees are forfeited to the Service Provider.

Termination or Refusal of Services

25. The Service Provider may refuse to accept a registration for Services, and may cancel any such registration, if she reasonably suspects that:
- a. you have, or are likely to, breach these Terms; or
 - b. you do not, or are not likely to, qualify under applicable law or these Terms to access or use the Services.
26. The Service Provider may refuse or cancel a Client's registration for Services on 30 days written notice to you where the Service Provider, acting reasonably, terminates these Terms for any legitimate business, legal or regulatory reason.
27. These Terms will immediately cease to be effective if the Service Provider becomes bankrupt within the meaning of the *Bankruptcy Act 1966* (Cth) or ceases to carry on the Business.
28. The Service Provider reserves the right to refuse any registration for the Services in its sole discretion.
29. If the Service Provider determines to refuse or cancel a registration, you will be notified as soon as practicably possible after such refusal or cancellation occurs.
30. You may terminate these Terms and stop using the Services at any time and for any reason.

Cancellations

31. You may cancel a booking request up to 72 hours before the Services are due to be provided to you, for any reason, without forfeiting any deposit or fee already paid. In such circumstances, the fee or deposit paid will be saved as a credit with the Service Provider, to be credited towards any Services provided by them, through either Business, at a later date. However, in the event that you do not wish to use the Services of the Service Provider at any later date, refunds for credited and unused fees or deposits paid will not be granted.

32. If you seek to cancel a booking for Services within 72 hours before those Services are due to be provided, then you automatically forfeit any sum (whether fee or deposit) that has already been paid to (or put on hold on behalf of) the Service Provider.
33. If cancellation occurs because the Services are no longer required for any reason relating to the COVID-19 Pandemic, including the following (non-exhaustive);
 - a. The cancellation of flights;
 - b. The closing of borders; or
 - c. The introduction or re-introduction of restrictions within this State,

then any fee or deposit paid by you will be held as a credit, except an administration fee as determined by the Service Provider (acting reasonably).

Use of Information

35. You acknowledge that the Service Provider will collect, hold, use and disclose any personal information you provide to them only to the extent necessary for the provision of the Services or other business or legal requirements.
36. You warrant that the information provided by you to the Service Provider is true, accurate and complete and you acknowledge that the Service Provider reserves the right to verify your information.
37. The Service Provider may provide any necessary information, including contact information, to a claims processor or an insurer if there is a complaint, dispute, accident or conflict involving your use of the Services and such information or data is necessary to resolve the issue.
38. Unless otherwise agreed between the parties, the Service Provider retains the right to take photographs during the provision of the Services and use these for any reasonable purposes consistent with its business operations (such as, without limitation, marketing and advertisement of the Business).

Confidential information

39. All Confidential Information of a party that is provided to the other party must be kept confidential by that party, unless:
 - a. The party providing the information consents to its release;
 - b. Reasonably necessary to be used or disclosed for the performance of the Services; or

- c. Otherwise authorised or required by law.

Warranties

40. The Service Provider warrants:
 - a. that it holds all licences, registrations and other necessary authorisations to provide the Services, including, without limitation, a liquor licence for the provision of alcohol during the use of the Services; and
 - b. that it is insured by a reputable insurer for risks associated with the provision of the Services that a prudent proprietor of a business similar to the Service Provider would insure for.
41. If you arrange a ride on behalf of a Passenger, you warrant that they will comply with these Terms.
42. Except as otherwise stated herein, to the extent permitted or required by law the Service Provider gives no warranties or representations or guarantees regarding the Services.
43. The parties indemnify each other from and against any loss, expenses, claims, damage and liability incurred by the Client, whether directly or indirectly, in connection with a breach by the other party of any of the warranties contained in clauses 40 and 41 above.

Further Indemnity

44. The Client indemnifies the Service Provider from and against any loss, expenses, claims, damage and liability incurred by the Service Provider, whether directly or indirectly, in connection with a breach of these Terms by the Client.
45. The parties indemnify each other from any loss, expense, claim, damage or liability incurred by the other except for the indemnifying party's own negligence, illegal action or gross misconduct.

Complaints

46. If you have any complaints about the provision of the Services you agree to notify the Service Provider of such. You agree to keep the complaint private between you and the Service Provider and not to make any public comment or complaint about the Services.

Dispute Resolution

47. If any dispute arises in connection with these Terms the party requiring it to be resolved must promptly give the other party written notice giving details of the dispute.
48. Within 5 Business Days of a party receiving the notice referred to in clause 47 **Error! Reference source not**

found., or such longer period as agreed by the parties, the parties must meet and, in good faith, attempt to resolve the dispute by negotiation.

49. In the event the parties are unable to reach a resolution of the dispute by negotiation within the period referred to in paragraph 48, any party may by notice in writing to the other party advise the other party that it seeks to have the dispute resolved by mediation. The mediator must be agreed between the parties, and failing any such agreement will be determined by the President for the time being of the Law Society of South Australia (or its successor body).

Limited Liability

50. Notwithstanding anything else in this contract and to the maximum extent permitted by law:
- a. The Service Provider cannot control, and disclaims any liability for, fees that may be charged by your bank or credit or debit card company or payment method related to the Service provider's collection of Service (or Damage or Waiting) Fees.
 - b. The Service Provider will not be liable, in the event of mechanical breakdown or similar event outside the Service Provider's control, for any loss to you. This disclaimer of liability extends to any incidental loss including, without limitation, the cost of any missed flight.
 - c. To the maximum extent permitted by law the Service Provider will not be liable for any loss, injury or death to a Passenger occurring during the Passenger's use of the Services.
 - d. To the extent the Service Provider will be liable for any such loss, injury or death pursuant to clause 50 (c) above, such liability will be limited to \$5,000.

Force Majeure

51. The Service Provider is not liable for failure to perform this contract to the extent and for so long as its performance is prevented or delayed because of circumstances outside its' direct control – including without limitation, the COVID-19 Pandemic, floods, fire, storms, or acts of God, or any human causes such as strike, lockout or other industrial action – and without fault or negligence by the Service Provider, but only if the Service Provider:
- a. immediately gives notice to the Client; and
 - b. does everything reasonable and within its power to remedy the cause quickly.

Notices

52. Any notice or other communication to or by a party to this Agreement:
- a. must be in legible writing and in English;
 - b. where the sender is a company, must be signed by an officer or under the common seal of the company;
 - c. is regarded as being received by the addressee:
 - i. if by delivery in person, when delivered to the addressee;
 - ii. if by post, three (3) Business Days from and including the date of postage; or
 - iii. if by electronic transmission or facsimile transmission when the sending machine confirms the notice has been sent.

Severability

53. Any provision of this agreement that is held to be unenforceable shall be deemed to be severed without affecting the enforceability of the remaining provisions.

Relationship with other laws

54. Nothing in these Terms is intended to limit your rights as a consumer under the Australian Consumer Law.

No waiver

55. Failure or delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this agreement by any party will not operate as a waiver of such. Any waiver or consent given by any party under this Agreement will only be effective if it given or confirmed in writing by that party.

This Contract

56. This contract is the whole contract between the parties about the Services. The only terms implied in this contract are those implied by mandatory operation of law.
57. This contract supersedes any prior contract or obligation between the parties about the Services.

Governing Law

58. This contract is governed by the laws of South Australia and the courts of South Australia have exclusive jurisdiction in connection with this contract. The parties submit to the jurisdiction of those courts and any courts having appellate jurisdiction.