

Terms and Conditions of Liability

Gliding is a recreational activity which carries inherent risks of injury, disability or death because it is an activity which involves the operation and flying of an aircraft.

If you do not wish to be exposed to such risks, then you should not participate in the Activities associated with the Club or Gliding Australia.

1. General Terms and Conditions

- 1.1 I agree to obey and comply with all rules and directions made or given to me by Gliding Australia, the Club, my instructor of the glider and the ground crew in connection with gliding.
- 1.2 If I fail to comply with any rule or direction, I accept that:
 - (a) I will not be permitted to undertake gliding or to continue to glide with the Club; and
 - (b) My membership with Gliding Australia may be terminated.
- 1.3 I acknowledge that I have been warned by Gliding Australia and the Club of the risks associated with gliding, including injury, death or loss or damage arising from or in connection with gliding and I attend or participate in the Activities at my own risk.

2. Acknowledgement of Risks

- 2.1 I acknowledge that the risks associated with attending or participating in the Activities with the Club include but are not limited to the risk that I may suffer harm as a result of:
 - (a) contact with any person(s) or from contact with other person(s) or objects (whether advertent or inadvertent);
 - (b) other aircraft acting dangerously or with lack of skills; and
 - (c) injuries or death arising from my physical or health conditions (whether this is disclosed to either the Club or Gliding Australia, or both, or not).

3. Exclusion of Liability, Release and Indemnity

- 3.1 In exchange for being able to attend or participate in the Activities at the Club, I agree to:
 - (a) release the Club from all liability arising from or in connection with:
 - (i) my death or any physical or mental injury or illness, including the aggravation, acceleration or recurrence of such an injury or illness;
 - (ii) any claim for any costs and expenses I may incur as a consequence of any of the above arising from my participation in or attendance in the Activities at the Club; and
 - (b) indemnify and keep indemnified the Club to the maximum extent permitted by law in respect of any Claim by any person.
- 3.2 In exchange for becoming a member of Gliding Australia, I agree to release Gliding Australia in connection with any claims referred to in clause 3.1(b) made against the Club.

4. Agreement to Exclude, Restrict or Modify my Rights

- 4.1 I acknowledge that the Club, as a supplier of Recreational Services, can ask me to agree that statutory guarantees under the Australian Consumer Law do not apply to me.
- 4.2 I acknowledge that Gliding Australia, as a supplier of the Membership, can ask me to agree that statutory guarantees under the Australian Consumer Law do not apply to me.
- 4.3 I agree that the liability of the Club for any death or personal injury that may result from the supply of the Activities which may be suffered by me is excluded and the application of any express or implied term that any services will be provided by the Club with due care and skill is hereby excluded.

5. Acknowledgement

- 5.1 I understand that:
 - (a) Nothing in this document excludes, restricts or modifies any rights that I may have as a result of significant personal injury that is caused by the Reckless Conduct of Gliding Australia and the Club as the suppliers of the Activities and Recreational Services;
 - (b) Nothing in this document prevents Gliding Australia and the Club from relying on any laws (including statute and common law) that limits or precludes their liability;
 - (c) Nothing in this document excludes any term or guarantee which under statute cannot be excluded, however the liability of Gliding Australia and the Club is limited to the maximum extent allowable by law;
 - (d) Nothing in this document precludes me from making a claim under a Gliding Australia insurance policy or a Club policy where I am expressly entitled to make a claim under that insurance policy;
 - (e) I do not have to agree to exclude, restrict or modify my rights by signing this document. Gliding Australia and the Club may refuse to provide me with the services if I do not agree to exclude, restrict or modify my rights by signing this document. Even if I sign this document, I may still have further legal rights against Gliding Australia and the Club.

6. Liability of Gliding Australia and the Club in Each State / Territory

- 6.1 **QUEENSLAND** Pursuant to the *Civil Liability Act 2003* (Qld) I acknowledge that the liability of Gliding Australia and the Club for any personal injury suffered by me as a result of the obvious risks of dangerous Activities and Recreational Services is excluded.
- 6.2 **NEW SOUTH WALES** Pursuant to the *Civil Liability Act 2002* (NSW) I acknowledge that Gliding Australia and the Club owe no duty of care to me in respect of the obvious risks associated with the dangerous Activities and the provision of the Recreational Services because they have advised me of the risks which are set out in this document. I acknowledge and agree that the liability of Gliding Australia and the Club for any personal injury suffered by me as a result of the obvious risks of dangerous Activities and Recreational Services is excluded.
- 6.3 **VICTORIA** Pursuant to the *Australian Consumer Law and Fair Trading Act 2012* (VIC) and the *Australian Consumer Law and Fair Trading Regulations 2012* (Vic), I acknowledge that Gliding Australia's and the Club's liability is limited in accordance with the below warning.

WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012

Under the Australian Consumer Law (Victoria) several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that the recreational services it supplies to you---

- are rendered with due care and skill; and
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- might reasonably be expected to achieve any result you have made known to the supplier.

Under section 22 of the **Australian Consumer Law and Fair Trading Act 2012**, the supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the **Australian Consumer Law and Fair Trading Act 2012** if you are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in this form.

NOTE: The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. **Gross negligence**, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the Australian Consumer Law and Fair Trading Regulations 2012 and section 22(3)(b) of the **Australian Consumer Law and Fair Trading Act 2012**.

- 6.4 **WESTERN AUSTRALIA** Pursuant to the *Civil Liability Act 2002* (WA) I acknowledge that the liability of Gliding Australia and the Club for any personal injury suffered by me from obvious risks of partaking or engaging in dangerous recreational Activities and Recreational Services is excluded.
- 6.5 **TASMANIA** Pursuant to the *Civil Liability Act 2002* (Tas) I acknowledge that the liability of Gliding Australia and the Club for any personal injury from the materialisation of the obvious risks of dangerous recreational Activities and Recreational Services engaged in by me is excluded.
- 6.6 **SOUTH AUSTRALIA** Pursuant to the *Civil Liability Act 1932* (SA) I acknowledge that the liability of Gliding Australia and the Club for any personal injury suffered by me as a result of the obvious risks of the dangerous Activities and Recreational Services is excluded.
- 6.7 **AUSTRALIAN CAPITAL TERRITORY** I acknowledge that the liability of Gliding Australia and the Club for any death or personal injury suffered by me as a result of the obvious risks associated with the dangerous Activities and Recreational Services is excluded in accordance with clause 4 above.
- 6.8 **NORTHERN TERRITORY** Pursuant to the *Consumer Affairs and Fair Trading Act 1990* (NT), I acknowledge that:
(a) I have had a reasonable opportunity to consider the risks associated with the Activities and the risks of sustaining a personal injury as a result of participating in the Activities and Recreational Services;
(b) The liability of Gliding Australia and the Club for any personal injury suffered by me as a result of the risks associated with the dangerous Activities and Recreational Services is excluded.

7. Definitions

- (a) "*Australian Consumer Law*" means "Schedule 2 – The Australian Consumer Law" contained in the Competition and Consumer Act 2010 (Cth);
- (b) "*Activities*" means any classes, courses or instructional services offered by Gliding Australia or the Club including learning to glide group classes, private training, activities by me within Gliding Australia's premises including unsupervised or supervised training, or other forms of training and usage of Gliding Australia's facilities and equipment and includes Recreational Services;
- (c) "*Claim*" means and includes any action, suit, proceeding, claim, demand or cause of action however arising including but not limited to negligence, but does not include a claim under a Prima Spada insurance policy by any person expressly entitled to make a claim under that insurance policy;
- (d) "*Club*" means a gliding club who is a member of Gliding Australia and provides Activities and/or Recreational Services;
- (e) "*Gliding Australia*" means the Gliding Federation of Australia, registration number A0046188T trading as Gliding Australia;
- (f) "*Membership*" means your membership with Gliding Australia;
- (g) "*Recreational Services*" means services that consist of participation in:
 - (i) a sporting activity; or
 - (ii) a similar leisure time pursuit or any other activity that involves a significant degree of physical exertion or physical risk and is undertaken for the purposes of recreation, enjoyment or leisure.
- (h) "*Reckless Conduct*" means conduct where the supplier of the recreational services is aware, or should reasonably have been aware, of a significant risk that the conduct could result in personal injury to another person and engages in the conduct despite the risk and without adequate justification;