

**1. DEFINITIONS**

- 1.1. **Additional Fees** means all and any other fees which may be payable under these terms and conditions, including (but not limited to) the additional fees referred to in clause 4.5.
- 1.2. **ASK** means Apple Street Kennels Pty Ltd (ACN 166 599 088) and includes its successors and assigns or any person acting on behalf of and with the express authority of ASK.
- 1.3. **Contract** means the agreement between ASK and the Owner, consisting of the following documents:
  - a. these terms and conditions; and
  - b. the Schedule.
- 1.4. **Dog** means the dog(s) owned by the Owner, and specified in Item 2 of the Schedule.
- 1.5. **Duration** means the duration of time for which the Services are provided, being the higher of:
  - a. the duration specified in Item 5 of the Schedule; or
  - b. the actual length of time, number of days or number of nights for which the Services have been provided.
- 1.6. **Fees** means the fees payable for the provision of the Services:
  - a. as specified in Item 4 of the Schedule; or
  - b. as otherwise expressly and unequivocally agreed in writing between the parties.
- 1.7. **Loss** means any claim, action, damage, loss, liability, cost, charge or expense.
- 1.8. **Owner** means the person, firm, organisation or corporation specified in Item 1 of the Schedule, and includes the Owner's agents, officers, employees and subcontractors, and its successors and assigns.
- 1.9. **Premises** means 34 Apple Street, Upper Swan WA 6069.
- 1.10. **Schedule** means the schedule included with these terms and conditions, and incorporated into the Contract.
- 1.11. **Services** means any:
  - a. dog boarding kennel services (**Boarding Services**);
  - b. dog daycare services (**Daycare Services**); and
  - c. dog hydrobath services;
  - d. transport services regarding collection or delivery of the Dog, in order for any of the Services to be provided;
  - e. pool services; and
  - f. any other related service which ASK may provide from time to time,as specified in Item 3 of the Schedule as being the Services the Owner has elected to be provided.

**2. ACCEPTANCE**

- 2.1 The terms of this Contract shall be deemed to have been accepted by the Owner on the earlier of:
  - a. the execution of the Schedule;
  - b. the supply or commencement of provision of the Services.
- 2.2 Services are supplied by ASK only on the terms and conditions of this Contract to the exclusion of any other agreement or understanding, whether subsisting or entered into before or after the date of this Contract and for the avoidance of doubt shall take precedence to any terms and conditions notwithstanding any terms stated in any purchase order to the contrary.

**3. PERFORMANCE OF SERVICES**

- 3.1 Subject to the terms of this Contract, ASK shall perform the Services.
- 3.2 The Owner acknowledges and agrees that, unless ASK agrees otherwise in writing:
  - a. with respect to the Boarding Services, the Dog(s) must be picked up from, or delivered to, the Premises between 7.00am and 12.00pm only;
  - b. with respect to the Daycare Services, the Dog(s) must be:
    - i. delivered to the Premises at or after 7.00am;
    - ii. picked up from the Premises by no later than 4.00pm, unless ASK has expressly authorised in writing a later pick up time between 4.00pm and 6.00pm;
    - iii. any pick-up after 4.00 pm, even where ASK has authorised the same, may incur an Additional Fee.
- 3.3 The Owner acknowledges and agrees that:
  - a. ASK may refuse to provide the Services if ASK forms the opinion, in its sole discretion, that the Dog(s) may pose an unacceptable risk to ASK employees or contractors;
  - b. if ASK refuses to provide the Services in accordance with clause 3.3a. above, then the Owner must immediately collect and remove the Dog(s) from the Premises; and
  - c. ASK shall not be liable for any direct or indirect Loss the Owner may suffer as a result of ASK exercising its right under this clause 3.

**4. FEES AND PAYMENT**

- 4.1 The Owner must pay the Fees and any Additional Fees to ASK, without set-off or deduction, at either the time of delivering the Dog(s) to the Premises or upon collection of the Dog from the Premises, at the sole discretion of ASK.
- 4.2 The Owner agrees that ASK may exercise a lien over the Dog(s) until all Fees and Additional Fees have been paid in full.
- 4.3 Unless expressly included, the Fees and Additional Fees exclude all GST payable in respect of the Services. If GST is applicable, then the Owner shall be liable to pay all GST payable in respect of a taxable supply.
- 4.4 If the Owner defaults in payment of the Fees and Additional Fees when due:
  - a. the Owner shall indemnify ASK from and against all costs and disbursements incurred by ASK in pursuing the debt, including all legal costs on a full indemnity basis (including on a solicitor and own client basis) and collection agency costs; and
  - b. the Owner shall pay interest at the rate of 10% per annum on all outstanding monies owing to ASK calculated on a daily basis from the due date for actual payment until the actual date of payment.
- 4.5 The Owner acknowledges and agrees that it shall be liable for any additional costs incurred by ASK in providing the Services, including (but not limited to) any veterinary costs incurred by ASK, as contemplated in clause 5.1.
- 4.6 For the avoidance of any doubt, the Fees and Additional Fees paid by the Owner are all non-refundable.

**5. DOG – ILL HEALTH**

- 5.1 In the event the Dog(s) becomes ill or injured, or ASK otherwise forms the opinion that the Dog(s) requires medical attention, during the Duration of the Services being provided, the Owner acknowledges and agrees that:
- a. ASK may, in its sole discretion:
    - i. engage the services of any veterinarian it may choose, having regard to the availability and cost of the veterinarian;
    - ii. administer medicine; or
    - iii. provide any other requisite attention to the Dog(s); and
  - b. all and any costs incurred by ASK in arranging veterinary care, administering medicine or any other task ASK attends to as contemplated in clause 5.1 above, shall be payable by the Owner.

5.2 ASK shall not be liable in any way for any direct or indirect Loss the Owner may suffer as a result of the Dog(s) being ill or injured, or ASK forming the opinion that the Dog(s) may require medical attention.

**6. DOG – ABANDONMENT**

6.1 In the event that the Dog(s) is not collected by the Owner within 14 days of the agreed end date of the Duration, as specified in Item 5 of the Schedule, and without the express written authority of ASK, the Owner acknowledges and agrees that ASK may (in its sole discretion):

- a. re-home the Dog(s) to a person(s) determined by ASK, in its sole discretion; or
- b. arrange to have the Dog(s) removed from the Premises by the shire or council ranger.

6.2 ASK shall not be liable in any way for any direct or indirect Loss the Owner may suffer as a result of ASK exercising its rights under the clause 6.1 above.

**7. OWNER'S REPRESENTATIONS**

7.1 The Owner acknowledges and agrees that it is solely responsible for providing ASK all and any information regarding the Dog(s) which may affect the Services being provided. This includes (but is not limited to) any:

- a. pre-existing health conditions of the Dog(s);
- b. temperament issues the Dog(s) may have;
- c. matters which may increase the anxiety of the Dog(s);
- d. medication the Dog(s) may require.

7.2 The Owner represents and warrants that it has provided the Owner with all and any information which ASK may reasonably require to provide the Services.

7.3 ASK shall not be liable for all and any Loss suffered by the Owner as a direct or indirect result of the Owner's breach of clauses 7.1 and 7.2 above.

7.4 The Owner shall indemnify (and keep indemnified) ASK from and against any Loss it suffers as a result of the Owner's breach of clauses 7.1 and 7.2 above.

7.5 Unless expressed otherwise in this Contract, the Owner hereby grants consent to ASK for:

- a. taking photographs and video footage of the Dog; and
- b. using the above photographs and video footage on social media, ASK's website or any other form of media ASK may determine from time to time.

**8. LIMITATION OF LIABILITY**

8.1 Except as expressly provided in this Contract, any terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the subject matter of this Contract or the Services are excluded to the maximum extent permitted by law.

8.2 If the Owner is a consumer within the meaning of the *Competition and Consumer Act 2010* (Cth) (CCA), ASK's liability to the Owner is limited to those remedies set out in section 64A(2) of Schedule 2 to the CCA.

8.3 The Owner acknowledges that it has not relied on any representation or warranty made by ASK which has not been stated expressly in the Contract or upon any descriptions or specifications contained in any document published or provided by ASK.

8.4 This clause 8 shall survive the expiry or termination of this Contract.

**9. INDEMNITY**

9.1 The Owner shall indemnify (and keep indemnified) ASK from and against any and all Loss (including all legal costs on a full indemnity basis, and solicitor-own client basis) whatsoever or howsoever arising which may be incurred or suffered by ASK, either directly or indirectly, arising from or in connection with any one or more of the following:

- a. the breach by the Owner of a material term or any of the Owner's obligations under this Contract, including (but not limited to) the obligations contained in clauses 4 and 7;
- b. the termination of this Contract;
- c. the recovery of any amount owing by the Owner to ASK under this Contract;
- d. any claims or demands by ASK by reason of any such Loss which may be suffered by any person from the Dog(s).

9.2 This clause 9 shall survive the expiry or termination of this Contract.

**10. TERMINATION**

10.1 Without prejudice to any other remedies ASK may have, ASK may terminate this Contract:

- a. at any time ASK believes that the Owner may breach an obligation (including those relating to payment) or the Owner is in breach of any obligation;
- b. ASK determines, in its sole discretion and at any time during the Duration, that the Dog(s) poses an unacceptable risk to ASK employees, contractors, other dogs at the Premises or to any member of the public.

10.2 ASK will not be liable to the Owner for any Loss whatsoever the Owner howsoever suffers because ASK has exercised its rights under this clause 10.

**11. GENERAL**

11.1 If any provision of this Contract shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

11.2 This Contract shall be governed by the laws of Western Australia and ASK and the Owner agree to submit to the exclusive jurisdiction of the courts of Western Australia

- 11.3 The Owner agrees that ASK may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect 14 days from the date on which ASK notifies the Owner of such change. Should the Owner not wish to accept any changes made by ASK, then they can terminate this Contract by notice in writing within 14 days of receiving the notice from ASK, upon which all Fees and Additional Fees become immediately payable to ASK without set off or deduction.
- 11.4 The failure by ASK to enforce any provision of this Contract shall not be treated as a waiver of that provision, nor shall it affect ASK's right to subsequently enforce that provision.
- 11.5 Any special conditions stated in the Schedule shall apply to this Contract and in the event of any inconsistency with the terms of this Contract, the special conditions shall prevail.
- 11.6 This Contract is the entire agreement between the parties in respect of its subject matter and supersedes all prior and contemporaneous understandings and agreements relating to its subject matter.
- 11.7 This Contract may be executed in any number of counterparts and all those counterparts taken together will constitute one instrument.
- 11.8 A provision of this Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Contract.
- 11.9 If a party consists of more than 1 person, this Contract binds each of them separately and any 2 or more of them jointly.