

CONDITIONS OF SUPPLY AND SALE

The following conditions of supply and sale ('**Conditions of Sale**') apply to and bind the purchaser and user of a Falls Creek Hotham Snow Pass Media Card or a Snow Pass Media Product from Falls Creek Ski Lifts Pty Ltd ('**FCSL**') (ABN 46 004 843 761) or from Mount Hotham Skiing Company Pty Ltd (ABN 60 004 294 697) ('**MHSC**') (collectively called '**the Suppliers**') whether the purchaser purchases the Snow Pass Media Card or the Snow Pass Media Product from the FCSL Website or the MHSC Website (collectively called '**Website**') or by telephone, postal order or by visiting the Supplier's Offices.

1. DEFINITIONS

- 1.1 '**Ski Lifts**' means such chair lifts, t-bars, poma lifts, moving carpet and tow ropes as may be operated by the Suppliers at their respective resorts during the Snow Season.
- 1.2 '**Snow Pass Media Product**' means any products sold by the Suppliers that provides the purchaser or user with access to and use of ski and snowboard slopes in the Falls Creek and Mount Hotham Alpine Resorts, Ski Lifts, ski or snowboard lessons, or ski and snowboard rental products on a daily or multiday basis and the purchase of ski and snowboard equipment.
- 1.3 '**Snow Season**' means the period in each calendar year during which the Suppliers operate the Ski Lifts at their respective resorts.
- 1.4 '**Supplier's Offices**' means the Supplier's offices located at the Falls Creek Alpine Resort, the Mount Hotham Alpine Resort, or at any other location from time to time.

2. ABOUT THESE CONDITIONS OF SALE

- 2.1 Please read these Conditions of Sale carefully before using the Website. By using the Website, you are agreeing to be bound by these Conditions of Sale. If you choose not to be bound by these Conditions of Sale, the Suppliers will not grant you the right to use the Website and the Suppliers will not sell or supply you with any of their products.
- 2.2 These Conditions of Sale include and must be read in conjunction with the Suppliers' Privacy Policy (as displayed on the Website) and the Alpine Responsibility Code.

3. SNOW PASS MEDIA CARDS

- 3.1 Snow Pass Media Cards issued to you by the Suppliers at a cost of \$3.00 are used for the storage of your purchases of Snow Pass Media Products.
- 3.2 A Snow Pass Media Card will be replaced at a cost of \$3.00 for any card lost, stolen or damaged.
- 3.3 The purchase of Snow Pass Media Products are non-refundable and non-transferable once payment has been processed.
- 3.4 Names on the Snow Pass Media Product orders cannot be altered after the order has been made.
- 3.5 A Snow Pass Media Card does not entitle the holder to any lift access without the purchase of a Ski Lift access product.
- 3.6 In purchasing your Snow Pass Media Products you agree to receive communications from the Suppliers' marketing teams by email (but not limited to this medium) advising you of key information and updates, including additional benefits to Snow Pass Media Card holders.

- 3.7 Snow Pass Media Cards must be carried in your ski jacket at all times while you are on the ski/snowboard slopes and must be presented to the Suppliers' authorised personnel upon request. The Snow Pass Media Card is reusable when loaded with the purchase of Snow Pass Media Products, No refund will be made if any Ski Lifts are not operating or for customer illness or injury.

4. ORDERING PROCEDURE

- 4.1 You may offer to purchase any Snow Pass Media Products described in the Website for the price specified in the Website.
- 4.2 Your order must contain your name, postal address, phone number, date of birth, e-mail address, credit card details and any other ordering information specified on the Website.
- 4.3 Payment must be effected by credit card using the ordering facility on the Website.
- 4.4 You are responsible for ensuring the accuracy of your order. The Suppliers shall endeavour to supply you, subject to availability, with the Snow Pass Media Products set out in your order. Confirmation of your purchase will be sent to your nominated email address within two business days together with a receipt once your payment for the Snow Pass Media Products has been cleared. If you do not receive a confirmation email within two business days please contact FCSL on tickets@falls creek.net or MHSC on tickets@hotham.com.au as the case dictates.
- 4.5 You may not cancel an order once it has been submitted and paid, even if a confirmation email from the Suppliers is still pending.
- 4.6 Snow Pass Media Products are available for sale only to persons who can make legally binding contracts.
- 4.7 If you purchase Snow Pass Media Products by telephone, post or by visiting one of the Suppliers' Offices then any such purchase will be governed by these Conditions of Sale excluding any of the Conditions of Sale that are specific to purchases made using the Website.
- 4.8 If you opt to collect your Snow Pass Media Card or Snow Pass Media Products direct from the Suppliers you will need to provide a valid photo ID showing your date of birth.

5. YOUR AGREEMENT TO THESE CONDITIONS OF SALE BY MAKING AN ORDER

By ticking the 'I AGREE' box, typing in 'I AGREE' and your name in the two boxes provided for that purpose and then by completing your purchase/s and payment by credit card you agree to these Conditions of Sale including the Exclusion of Liability Conditions (in paragraph 14) and the Suppliers will treat the order as confirmed.

6. PRICING

- 6.1 The price of the Snow Pass Media Products shall be the price displayed on the Website on the date of your order (inclusive of goods and services tax and any other charges which must be mandatorily disclosed under the *Competition and Consumer Act 2010* (Cth) but exclusive of delivery charges which are payable by you).
- 6.2 All prices displayed on the Website are quoted in Australian dollars and must be paid in full, including delivery charges, except where discounts are offered as detailed on the Website.

7. CANCELLATION DUE TO ERROR OR UNAVAILABILITY

- 7.1 You acknowledge that despite the Suppliers' reasonable precautions, Snow Pass Media Products may be listed at an incorrect price, with incorrect information, or which are

unavailable due to a typographical error or other oversight. In these circumstances, the Suppliers each reserve the right to cancel the transaction, notwithstanding that your order has been confirmed and your credit card has been charged. The Suppliers each reserve this right up until the time of delivery or use of the Snow Pass Media Products.

- 7.2 If a cancellation of this nature occurs after your credit card has been charged for the purchase, the respective Suppliers will immediately or as soon as practical issue a credit to your credit card account for the amount in question.

8. DELIVERY

- 8.1 Australia Post is the Suppliers' usual postal agent and it will make deliveries unless otherwise instructed and in accordance with the terms and conditions stipulated by it. All Snow Pass Media Cards and Snow Pass Media Products will be delivered to the address that you have indicated on your order. Risk of damage or loss of the Snow Pass Media Cards and Snow Pass Media Products passes to Australia Post when it takes possession of your order from the Suppliers. Any times quoted for delivery are approximate only and the Suppliers shall not be liable for any delay in the delivery of the Snow Pass Media Cards or Snow Pass Media Products howsoever caused.
- 8.2 Costs of delivery and/or postage in Australia will be added to the purchase price of the Snow Pass Media Cards and Snow Pass Media Products and deducted from your credit card accordingly. The costs of delivery and/or postage outside of Australia may vary from the charge indicated. From time to time, the Suppliers may need to charge additional costs other than those indicate on the Website. These charges shall be added to the purchase price and deducted from your credit card.

9. RESALE, TRANSFER OR ALTERATIONS TO SNOW PASS MEDIA CARDS PROHIBITED

- 9.1 A Snow Pass Media Card must only be used by the person to whom it is issued and must not be resold, transferred or altered in any manner. Should this provision be breached the Snow Pass Media Card in question will be cancelled and the respective Suppliers reserve the right to refer the matter to the police.
- 9.2 You acknowledge and accept that any Snow Pass Media Card purchased by you may be cancelled at the discretion of the Suppliers if:
- 9.2.1 an unauthorised person is found to be using it prior to you reporting it lost or stolen; or
 - 9.2.2 the user fails to comply with all signs or other direction of the Suppliers, or for reckless or careless conduct.

10. SECURITY POLICY

- 10.1 When purchasing from the Website your financial details are passed through a secure server.
- 10.2 No transmission over the Internet can be guaranteed as totally secure. Whilst the Suppliers strive to protect such information, the Suppliers do not warrant and cannot ensure the security of any information which you transmit to the Suppliers. Accordingly, any information which you transmit to the Suppliers, including your credit card details, is transmitted at your own risk, and the suppliers shall have no liability to you for any financial or consequential loss or damage suffered by you in anyway whatsoever arising out of or related to your use of this website whether due to negligence, breach of contract, breach of guarantees, statute or statutory duty by the suppliers.
- 10.3 Once the respective Suppliers receive your transmission, the respective Suppliers will take reasonable steps to preserve the security of such information.

11. AGENCY

If you purchase any Snow Pass Media Card or Snow Pass Media Products, from the Suppliers via the website, or by any other means, on behalf of another person, you agree that you make that purchase as the authorised agent of that person so that he/she will be bound by these Conditions of Sale.

12. VARIATION TO THE CONDITIONS OF SALE

The Suppliers retain the right to vary these Conditions of Sale at any time provided that this does not materially affect the nature of the Snow Pass Media Products purchased. Any variations become effective on posting of the changes on the Website. By making a purchase through the Website you agree to be bound by these Conditions of Sale and by any later variation to them when posted on the Website. The Suppliers encourage users to review this document regularly to keep abreast of changes.

13. TERMINATION OF ACCESS

Access to the Website may be terminated at any time by the Suppliers without notice. The respective Suppliers' limitation of liability will nevertheless survive any such termination.

14. EXCLUSION OF LIABILITY

Read Carefully- these Conditions Affect Your Legal Rights!

14.1 Falls Creek Ski Lifts Pty Ltd and Mount Hotham Skiing Company Pty Ltd, being the Suppliers of recreational services in the Falls Creek Alpine Resort and the Mount Hotham Alpine Resort respectively, supply and sell the following recreational services, namely access to Ski Lifts, access to and use of ski and snowboard slopes, skiing and snowboarding lessons, tobogganing, snowtubing and ski and snowboard rental products, as well as providing snow making, the condition, layout, design, construction, maintenance and grooming of ski/snowboard slopes and surrounds, and all other associated sporting activities or similar leisure time pursuits (collectively called Recreational Activities) subject to the following conditions:

14.2 Exclusion of Liability

The Suppliers, their employees, directors and agents are not liable to you, your dependants or legal representatives for personal injury or death suffered by you due to the Recreational Activities not being supplied with due care and skill or not being reasonably fit for their purpose or for breach of any other of the consumer guarantees applied by the Australian Consumer Law (Victoria), or due to the negligence, breach of contract or statute or statutory duty by the Suppliers.

14.3 Risk Warning and Waiver to Sue

You acknowledge that the Recreational Activities are dangerous with many inherent risks and hazards and as a consequence personal injury and sometimes death can occur and you assume and accept all such risks and hereby waive the right to sue the Suppliers for any personal injury or death in any way whatsoever caused by or arising from your participation in such activities.

14.4 You acknowledge that:

14.4.1 The Suppliers strongly recommend that all skiers and snowboarders wear accredited helmets whenever skiing or snowboarding and also recommend that snowboarders wear wristguards.

14.4.2 The wearing of an accredited helmet is compulsory for:

14.4.2.1 all persons participating in skiing or snowboarding lessons in terrain, rail or half pipes, freestyle or freeform lessons or programs, ski or snowboard racing, race training and skiercross or boardercross; and

14.4.2.2 all children aged 3 to 14 years whilst participating in ski and snowboard school lessons or in any other snow sports program.

14.5 You hereby waive the right to sue the Suppliers for your death or any personal injury you may suffer due to your failure to wear an accredited helmet as recommended and required by sub paragraphs 14.4.2.1 and 14.4.2.2 and you also agree to indemnify and hold harmless the Suppliers against any claims by your dependants for death or personal injury suffered by them due to your failure to wear an accredited helmet.

14.6 **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 & 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 & 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 paragraphs 14.2, 14.3 and 14.5 above.

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 & Fair Trading Act 2012* and section 23(3)(b) of the *Australian Consumer Law & Fair Trading Act 2012*.

15. LAW AND JURISDICTION

These Conditions of Sale shall be governed by and construed firstly in accordance with the laws of the State of Victoria and then in accordance with the laws of the Commonwealth of Australia. If any part of these Conditions of Sale should be determined to be void, invalid or otherwise unenforceable, it shall be deemed deleted and the remaining Conditions of Sale shall remain and continue to be valid, binding and enforceable.

16. GENERAL

16.1 The Suppliers accept no liability for any failure to comply with these Conditions of Sale where such failure is due to circumstances beyond the Suppliers' reasonable control.

16.2 If the Suppliers waive any rights available to the Suppliers under these Conditions of Sale on one occasion, this does not mean that those rights will automatically be waived on any other occasion

17. ALPINE RESPONSIBILITY CODE

Regardless of how you enjoy your snow sport, always show courtesy to others and be aware that there are inherent risks in all snow recreational activities that common sense, protective equipment and personal awareness can reduce. These risks include rapid changes in the weather, visibility and surface conditions, as well as natural and artificial hazards such as rocks, trees, stumps, vehicles, lift towers, snow fences and snowmaking equipment.

Observe the code and share with others the responsibility for a great experience.

1. Know your ability and always stay in control and be able to stop and avoid other people or objects. It is your responsibility to stay in control on the ground and in the air.
2. Take lessons from professional instructors to learn and progress.
3. Use appropriate protective equipment to minimise the risk of injury.
4. Before using any lift you must have the knowledge and ability to load, ride and unload safely and always use the restraining devices.
5. Observe and obey all signs and warnings. Keep off closed trails or runs.
6. Give way to people below and beside you on the hill. It is your responsibility to avoid them.
7. Do not stop where you are not clearly visible from above. Look uphill and give way to others when entering/exiting a trail or starting downhill.
8. Always ensure your equipment is in good condition and use suitable restraining devices to avoid runaway skiing/boarding equipment.
9. Do not ski, board, ride a lift or undertake any other alpine activity if your ability is impaired by drugs or alcohol.
10. If you are involved in, or witness an accident or collision, alert Ski Patrol, remain at the scene and identify yourself to the Ski Patrol.

KNOW THE CODE. IT'S YOUR RESPONSIBILITY. FAILURE TO OBSERVE THE CODE MAY RESULT IN CANCELLATION OF YOUR TICKET OR PASS BY SKI PATROL OR OTHER AUTHORISED PERSONNEL.

'RESPECT GETS RESPECT'

FROM THE LIFT LINE, TO THE SLOPES, THROUGH THE PARK AND THE RESORT.