

TERMS AND CONDITIONS OF SALE

The following terms and conditions of sale ("**Terms of Sale**") will apply to and form part of any purchase of a Season Pass, Lift Pass, Rental of Equipment or Ski/Board Lessons (collectively called "**Goods and Services**") from the Falls Creek Ski Lifts Pty Ltd ("**FCSL**") website or the Mount Hotham Skiing Company Pty Ltd ("**MHSC**") website (collectively called "**Website**") or if the purchaser opts to purchase Goods and Services from the Suppliers by telephoning FCSL on 03 5758 1000 or MHSC on 0357 59 4444, or by requesting a mail order form from the Suppliers, or by visiting the main ticket offices of FCSL at Falls Creek or MHSC at Mount Hotham. Whatever method of purchase is used, the purchaser of Goods and Services will be agreeing to be bound by the Terms of Sale when he or she purchases Goods and Services.

1. About these Terms of Sale

- 1.1. Please read these Terms of Sale carefully before using the Website. By using the Website, you are agreeing to be bound by these Terms of Sale. If you choose not to be bound by the Terms of Sale FCSL or MHSC (collectively called "**Suppliers**") will not grant you the right to use the Website and you must not use the Website.
- 1.2. These Terms of Sale must be read in conjunction with all other applicable terms and conditions governing the use of this Website, including the Suppliers' Privacy Policy, Terms and Conditions of Season Passes, Lift Passes, Rental of Equipment, Ski/Board Lessons, Exclusion of Liability and the Alpine Responsibility Code.

2. Ordering Procedure

- 2.1. You may offer to purchase the Goods and Services offers described in the Website for the price specified on the Website.
- 2.2. Your order must contain your name, postal address, phone number, date of birth, email address, credit card details and any other ordering information specified on the Website.
- 2.3. Payment must be effected by credit card using the ordering facility on the respective Website.
- 2.4. Confirmation of your purchase will be sent to your nominated email address once your payment for the applicable Goods and Services 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.
- 2.5. You may not cancel an order once it has been submitted and paid, even if a confirmation email from the Suppliers is still pending.
- 2.6. The Goods and Services are offered for sale only to persons who can make legally binding contracts.
- 2.7. If you wish to purchase Goods and Services by telephone, post or by visiting one of the Suppliers' offices at Falls Creek or Mount Hotham then any such purchase will be governed by these Terms of Sale excluding any of the Terms of Sale that are specific to purchases made using the Website.
- 2.8. If you opt to collect Goods and Services direct from the Suppliers you will need to provide a valid photo ID showing your date of birth.

3. Pricing

- 3.1. The price of Goods and Services 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).

- 3.2. 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.

4. Cancellation due to error or unavailability

- 4.1. You acknowledge that despite the Suppliers' reasonable precautions, Goods and Services may be listed at an incorrect price, with incorrect information, or which are unavailable due to a typographical error or like 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 of the Goods and Services.
- 4.2. If a cancellation of this nature occurs after your credit card has been charged for the purchase, the respective Suppliers will immediately issue a credit to your credit card account for the amount in question.

5. Details of terms and conditions on Season Pass or Lift Pass

- 5.1 Details of the terms and conditions applicable to the Season Pass or the Lift Pass on the Website may differ from the actual Season Pass or Lift Pass supplied from time to time. The Suppliers reserve the right to make any changes to the details if necessary to comply with any applicable legislation and to change the details published on the Website, without affording notice, provided that this does not materially affect the nature of the Season Pass or the Lift Pass purchased.
- 5.2 In all respects, and to the maximum extent permissible, the Suppliers make no other warranties or promises in respect of the Goods and Services. If either of the Suppliers are liable for breach of a guarantee implied by the Australian Consumer Law of the **Competition and Consumer Act 2010 (Cth)** (not being a guarantee implied by Section 64 of the Australian Consumer Law) then their respective liability for a breach of any such guarantee will be limited, at their option, to any one or more of the following:
- (1) the replacement of the Goods and Services or the supply of a equivalent Goods and Services;
 - (2) the repair of the damaged Goods and Services;
 - (3) payment of the cost of replacing the Goods and Services or acquiring a equivalent Goods and Services;
 - (4) the payment of having the Goods and Services repaired.

6. Order submission

When you click on the submit order page on the Website you are agreeing to the Terms of Sale and the Suppliers will treat the order as confirmed. You are responsible for ensuring the accuracy of your order. The Suppliers shall endeavor to supply you, subject to availability, with the Goods and Services set out in your order. The respective Suppliers shall confirm each order made online via the Website or by email within two business days and will include a receipt with each Goods and Services purchased.

7. Delivery

- 7.1. 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 them. All Season Passes or Lift Passes will be delivered to the address that you have indicated

on your order. Risk of damage or loss of the Season Pass or Lift Pass 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 Season Pass or Lift Pass howsoever caused.

- 7.2. Costs of delivery and/or postage in Australia will be added to the purchase price of the Season Pass or Lift Pass 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.

8. Resale, transfer or alterations prohibited

All Season Passes or Lift Passes remain the property of the Suppliers and must not be resold, transferred or altered in any manner. Should this provision be breached the Season Pass or Lift Pass in question will be cancelled and the respective Suppliers reserve the right to refer the matter to the police. The Suppliers will not offer any refund for lost or stolen Season Passes or Lift Passes or if any of its facilities are not operating for any reason.

9. Security Policy

- 9.1 When purchasing from the Website your financial details are passed through a secure server using the latest 128-bit SSL (secure sockets layer) encryption technology.

- 9.2 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.

- 9.3 Once the respective Suppliers receive your transmission, the respective Suppliers will take reasonable steps to preserve the security of such information.

10. Limitation of liability

You acknowledge and accept that, to the extent permitted by law, the respective Supplier's liability is limited only to refunding the price of or replacing the Season Passes as provided for above. The Suppliers are not responsible to you to any greater extent and in particular are not liable to you for any indirect or consequential loss (including without limitation personal injury, financial loss such as loss of profit, or otherwise) that you may incur regardless of whether such liability arises in contract, tort (including negligence), equity, breach of statutory duty or otherwise.

11. Variation

The Suppliers retain the right to vary these Terms of Sale at any time. Any variations become effective on posting. By making a purchase through the Website after the Terms of Sale have been varied, you agree to be bound by the variation. The Suppliers encourage users to review this document regularly to keep abreast of changes.

12. Termination of access

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

13. Law and jurisdiction

These Terms 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 of these Terms of Sale should be determined to be illegal, invalid or otherwise unenforceable, it shall be deemed deleted and the remaining Terms of Sale shall remain and continue to be valid, binding and enforceable.

14. General

- 14.1 The Suppliers accept no liability for any failure to comply with these Terms of Sale where such failure is due to circumstances beyond the Suppliers' reasonable control.
- 14.2 If the Suppliers waive any rights available to the Suppliers under these Terms of Sale on one occasion, this does not mean that those rights will automatically be waived on any other occasion.

15. Comments, suggestions and complaints

If you have any comments or complaints to make about purchases made please contact us:

Falls Creek Ski Lifts Pty Ltd
PO Box 55
Falls Creek, Victoria 3699 Australia
Phone: 03 5758 1000
Fax: 03 5758 3416
E: admin@falls creek.net

Mount Hotham Skiing Company Pty Ltd
PO Box 140
Bright, Victoria 3741 Australia
Phone: 03 5759 4444
Fax: 03 5759 3692
E: mhsc@hotham.com.au

PRIVACY POLICY OF THE SUPPLIERS

The Suppliers are committed to protecting your right to privacy, especially in regard to personal information. The Suppliers are bound by the National Privacy Principles in the **Privacy Act 1988 (Cth)**, the Information Privacy Principles in the **Information Privacy Act 2000 (Vic)**, as well as other applicable laws and codes affecting your personal information.

1. About this Privacy Policy

This Privacy Policy outlines how the Suppliers manage your personal information. It also generally describes the sort of personal information held and for what purposes, and how that information is collected, held, used and disclosed.

This Privacy Policy applies to all your dealings with the Suppliers using the Website, in writing, in person, or over the telephone. The Suppliers encourage you to check the Website regularly for any updates to the Privacy Policy.

2. What is "personal information"?

The privacy principles which apply under the amended *Privacy Act 1988* (Cth) relate to personal information only. Personal information is any information or opinion from which the identity of an individual may be ascertained.

It should be noted that the definition does not extend to employee records and material that is publicly available. Information falling within these categories is not covered by the scope of the legislation.

You will know if the Suppliers are collecting personal information from you because you will be requested to provide it. The only exception to this is where someone else provides the Suppliers with your personal information. The Suppliers cannot prevent a third party from providing the Suppliers with your personal information without authority.

When you visit the Website, the Suppliers may collect general information that will not personally identify you, such as your Internet browser, operating system, date of visit, time of visit, and path taken through the site. This information alone does not identify an individual and the Suppliers will not combine it with information that does identify you as an individual. It provides data so the Suppliers can produce statistics that are used to analyse and improve the Website. Through this statistical data, the Suppliers are able to gain insights and a greater understanding of how people use the Website.

3. How do the Suppliers collect and use information?

The Suppliers are dedicated to keeping your details private. Any information the Suppliers collect in relation to you, is kept strictly secured. The Suppliers do not pass on/sell/swap any of your personal details with anyone. The Suppliers use this information to identify your orders and to personalise your shopping experience with the Suppliers.

The Suppliers uses cookies to allow you to login to your account, maintain a shopping cart and to purchase items in your shopping cart. Cookies sent to your computer from the Suppliers only last while you're browsing the Website. The Suppliers do not store persistent cookies on your computer. Cookies also allow the Suppliers to give you a more personalised shopping experience by displaying products that interest you throughout the Suppliers product pages, thus providing you with a more friendly, interesting and enjoyable shopping experience.

Whenever you use the Website, or any other web site, the computer on which the web pages are stored (the Web server) needs to know the network address of your computer so that it can send the requested web pages to your Internet browser. The unique network

address of your computer is called its "IP address," and is sent automatically each time you access any Internet site. From a computer's IP address, it is possible to determine the general geographic location of that computer, but otherwise it is anonymous.

The Suppliers do not keep a record of the IP addresses from which users access the Website except where you have specifically provided the Suppliers with information about yourself, in which case the Suppliers also record your IP address for security purposes. An example of this would be when proceeding to a checkout to finalise an order you may wish to make. After completing the form provided, your IP address will be stored along with a transaction number that allows the Suppliers to track your order

In order to conduct the Suppliers' operations, it is necessary for the Suppliers to collect certain information. This may include details such as your name, date of birth, address, phone number, fax, email address, and credit card number. This data is essential in order to facilitate the provision of goods and services that you have requested as a customer. The Suppliers may subsequently use these contact details to keep you informed about changes or developments occurring in the Suppliers' business, however the Suppliers respect your right to elect not to receive this material.

The Suppliers may also seek on occasion your opinions about the Falls Creek and Mount Hotham Alpine Resorts or the services offered by the Suppliers. Whilst voluntary and in most cases provided anonymously, this information assists the Suppliers to ensure a high level of customer service and quality of presentation is maintained.

The Suppliers wish to assure you that information is only collected in circumstances where the individual has consented and where the purpose and implication of providing the details is apparent. It is not the Suppliers' practice to utilise data capturing devices where you may be unaware personal details are being recorded.

4. What security measures ensure your information is protected?

The Suppliers administer all information they receive in a strictly confidential manner and as such the Suppliers do not sell or pass on your personal information to any other organisation or individual. However, in limited circumstances the Suppliers may be required and authorised by law to disclose your personal information.

All information held by the Suppliers is maintained in a secure environment and/or disposed of when no longer required for business or legal purposes. Information is protected not simply by physical security measures, but is also subject to limited user access and safe disposal measures.

5. Your sensitive information

The Suppliers will not collect information about you that reveals your racial or ethnic origin, political opinions, religious or philosophical beliefs or affiliations, membership of a professional or trade association, membership of a trade union, details of health, disability, sexual orientation, or criminal record.

6. Changes to this Privacy Policy

To fully protect your privacy, the Suppliers reserve the right to amend this Privacy Policy at any time and for any reason. The Suppliers will post the amended terms on the Website as they occur and encourage you to check for updates.

Changes to this Privacy Policy will not have any retrospective effect, and will not alter how the Suppliers handle your previously collected personal information.

7. No contract or liability

Nothing contained in this Privacy Policy is intended to create a contract or agreement between us and any user providing identifiable information in any form.

The Suppliers will take all necessary steps to comply with this Privacy Policy; however, to the extent permitted by law, nothing in this Privacy Policy is intended to hold the Suppliers liable for any failure to comply with this Privacy Policy.

8. Further information

The Suppliers are committed to ensuring your personal information is treated in accordance with a strict privacy policy and maintained in an accurate, current form. The Suppliers appreciate and encourage your assistance in keeping the Suppliers informed about changes to your details. You may request access to your personal information held by the Suppliers by contacting the Suppliers. At your request the Suppliers will provide you with the details of all your personal information the Suppliers hold. Should you wish to make a complaint about the Suppliers' handling of personal information, would like to access information held about you by the Suppliers, or require any further details about privacy, please contact:

Privacy Officer

Falls Creek Ski Lifts Pty Ltd
PO Box 55
Falls Creek VIC 3699
Phone: (03) 5758 1000

Mount Hotham Skiing Company Pty Ltd
PO Box 140
Bright VIC 3741
Phone: 03 5759 4444

ADDITIONAL TERMS AND CONDITIONS FOR PURCHASE OF SEASON PASSES AND LIFT PASSES

All Season Passes and Lift Passes issued by the Suppliers are subject to the following terms and conditions:

1. All Season Pass holders must sign and agree to the Terms and Conditions prior to obtaining their Season Pass.
2. Season Pass and Lift Pass purchases are non-refundable and non-transferable once payment has been processed. (Subject to payment and the conditions of the Season Pass Refund Protection option below).
3. Names on the Season Pass orders cannot be altered after the order has been made.
4. A child is classified as between 6 – 14 years of age at 9 June 2012. A Secondary student pass holder must be between 15 – 18 years of age at 9 June 2012. Seniors are persons over the age of 65 at 9 June 2012.
5. Season Passes and Lift Passes are valid for use at Falls Creek, Mount Hotham and Dinner Plain Resorts.
6. Proof of identification and secondary student enrolment will be required for collection of your Season Pass or your Lift Pass.
7. Season Passes and Lift Passes must be worn on the upper part of the body and be clearly visible. The Season Pass or the Lift Pass remains the property of Falls Creek Ski Lifts Pty Ltd and Mount Hotham Skiing Company Pty Ltd as the case dictates and are not transferable and cannot be resold. The Season Pass is valid for the current snow season (i.e. the snow season in which the Season Pass was purchased) only. No replacement or refund will be made for the loss of any Season Pass or Lift Pass or if any lift service is not operating or for customer illness or injury. The Season Pass or the Lift Pass is void if the seal is broken, it may be suspended or cancelled and access to lifts, services and other facilities denied at the absolute discretion of the Suppliers for reckless or careless conduct or non-compliance with the Alpine Responsibility Code or signs or other directions of the Suppliers.
8. A Season Pass or a day Lift Pass does not provide access to Falls Creek or Mount Hotham Night Skiing. A Season Pass does provide access for Mount Hotham Night Skiing.
9. You acknowledge and accept that your Season Pass or your Lift Pass may be cancelled if another person is found to be using your Season Pass or Lift Pass prior to you reporting your Season Pass or Lift Pass lost or stolen.

\$35 SEASON PASS REFUND PROTECTION

If you purchase Season Pass Refund Protection at the same time as purchasing your Season Pass you will receive the reassurance of a partial refund if you suffer injury or sickness which prevents you from further participating in skiing or snowboarding as outlined below.

Season Pass Purchase Price

INDIVIDUAL Season Pass Refund Protection - \$35 per Season Pass

FAMILY Season Pass Refund Protection - \$85 for 2 Adults and 2 Children

Season Pass Refund Protection - Terms and Conditions

1. Unless you purchase Season Pass Refund Protection when purchasing your Season Pass, Season Passes are **NOT REFUNDABLE** or subject to any refund under any circumstances.
2. Season Pass Refund Protection is only available at the time you purchase your Season Pass, and is only valid for the snow season for which the Season Pass was purchased.
3. Where Season Pass Refund Protection is purchased the Suppliers will refund a percentage of the cost of your Season Pass if you suffer injury/sickness which prevents you from further participating in skiing or snowboarding. No payments will be made under Season Pass Refund Protection where you have breached any terms and conditions applicable to the use of Season Passes or where you are prevented from participating in skiing or snowboarding as a result of committing or attempting to commit a crime, undertaking elective or cosmetic surgery, injury or sickness resulting from the use of alcohol or illicit or improper drug use, violation of the Alpine Responsibility Code or insufficient snow coverage.
4. If you have purchased Season Pass Refund Protection the Suppliers will refund the cost of your Season Pass if you are a Victorian resident who is transferred interstate or overseas by your employer; provided that the date of transfer is at least 30 days after the purchase of your Season Pass and up to 20 days after the start of the declared 2102 snow season.
5. The Season Pass Refund Protection fee is not refundable under any circumstances.
6. Season Pass Refund Protection does not cover pre-existing injuries or conditions that were present at the time of purchase of the Season Pass.
7. To request a refund, you must provide the Suppliers with a written request including a covering letter of explanation, your 2012 Season Pass and a medical certificate stating the cause and date of your injury/sickness and prognosis. Refunds will be calculated from the day the Suppliers receive your request.
8. Once a refund claim has been processed your Season Pass will be de-activated and cannot be used.
9. Refund protection under Season Pass Refund Protection ends on 9 August 2012 or the date when a refund is made by the Suppliers whichever is the earlier. No refund claims will be accepted by the Suppliers after 9 August 2012.
10. All refunds made under Season Pass Refund Protection are subject to these terms and conditions and all decisions made by the Suppliers in respect to any refund are final and binding and no correspondence will be entered into.

Season Pass Refund Protection Refund Schedule

Refund payments and the percentage amount refundable under Season Pass Refund Protection will be made where the injury/sickness occurs:

Up to 20 Days after the date of the start of the declared 2012 snow season - 70% of the Season Pass will be refunded;

21 - 40 Days after the date of the start of the declared 2012 snow season - 50% of the Season Pass will be refunded;

41 - 60 Days after the date of the start of the declared 2012 snow season - 20% of the Season Pass will be refunded;

Over 60 Days after the date of the start of the declared 2012 snow season - No refund will be paid

If you do not purchase Season Pass Refund Protection no refund or credit will be issued under any circumstances.

EXCLUSION OF LIABILITY – YOUR ASSUMPTION OF RISK - THESE CONDITIONS AFFECT YOUR LEGAL RIGHTS!

WARNING: If you participate in the Recreational Activities detailed below your rights to sue the supplier under the **Fair Trading Act 1999**, if you are killed or injured because the activities were not supplied with due care and skill or were not reasonably fit for their purpose, are excluded, restricted or modified in the way set out in or on this sign.

NOTE: The change to your rights, as set out in or on this sign, does not apply if your death or injury is due to gross negligence on the supplier's part. "Gross negligence" is defined in the **Fair Trading (Recreational Services) Regulations 2004**.

Mt Hotham Skiing Company Pty Ltd and Falls Creek Ski Lifts Pty Ltd, as the respective supplier of Recreational Services, sell all tickets and supply all recreational ski area services and facilities including, but not limited to skiing, snowboarding, snowtubing, tobogganing, skiing or snowboarding lessons, the use of ski lifts and helicopter flights between Mt Hotham Alpine Resort and Falls Creek Alpine Resort ("Resorts") ("Recreational Activities") subject to the following conditions:

1. These conditions do not affect any rights you have under Schedule 2 of the **Competition and Consumer Act 2010 (Cth)** ("the Act") except to the extent excluded in condition 2.
2. We and our employees, directors, officers, guides, instructors, contractors and agents ("**Supplier**") are not liable to you, your dependants or legal representatives in negligence, breach of contract or statute or statutory duty (including for breach of consumer guarantees implied by the Act) for personal injury or death suffered by you from our supply of Recreational Activities and the condition, layout, construction, design or use of ski runs or slopes or the presence of people or objects or any associated sporting activities or similar leisure time pursuits on or at the Resorts.
3. You acknowledge that the Recreational Activities are dangerous with many inherent risks, dangers and hazards and personal injury and sometimes death can occur and you assume and accept all risk of personal injury or death from Recreational Activities, and you waive the right to sue the supplier for any personal injury or death in any way whatsoever arising from such activities.
4. You must:
 - (a) wear your ticket on the upper part of your body so it is clearly visible; and
 - (b) not transfer or resell it.
5. Your ticket is only valid for the date shown on it and if the seal is not broken.
6. We will not refund or replace a ticket:
 - (a) if you lose it or suffer an illness or injury;
 - (b) if any lift service is not operating.

7. You must comply with the **Alpine Responsibility Code** and our signs or other directions and we may suspend or cancel your access to Recreational Activities at our absolute discretion for non compliance with these conditions, the Alpine Responsibility Code or for reckless or careless conduct.

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.

ADDITIONAL TERMS AND CONDITIONS FOR RENTAL OF EQUIPMENT

WARNING UNDER THE FAIR TRADING ACT 1999

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 particular 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 32N of the **Fair Trading Act 1999**, 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 **Fair Trading Act 1999**, if you are killed or injured because the services 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" is defined in the **Fair Trading (Recreational services) Regulations 2004**.

RENTAL, LIABILITY RELEASE, ASSUMPTION OF RISK AND WAIVER TO SUE AGREEMENT

PLEASE READ CAREFULLY

BY RENTING EQUIPMENT FROM FALLS CREEK SKI LIFTS PTY LTD OR MOUNT HOTHAM SKIING COMPANY PTY LTD PURSUANT TO THIS AGREEMENT YOU WILL WAIVE CERTAIN LEGAL RIGHTS TO SUE UNDER THE COMPETITION AND CONSUMER ACT 2010, AND THE FAIR TRADING ACT 1999 AND FOR NEGLIGENCE AND BREACH OF CONTRACT

In consideration of the Falls Creek Ski Lifts Pty Ltd or Mount Hotham Skiing Company Pty Ltd and their employees and agents ("Supplier"), renting to me the equipment ("**Equipment**") listed on the Supplier's Rental Equipment Form: -

1. I acknowledge receipt of the Equipment in good order and condition and accept full responsibility for its care and I agree to pay for any damage to it however caused (including loss or theft) and will pay to replace at full retail value any Equipment not returned by 5pm on the final day of the rental period or be liable for the following and subsequent days rental at daily rates, whichever is the higher amount. I agree that any deposit lodged by me may be forfeited to pay for all or any part of these liabilities.
2. I am familiar with the proper use of the Equipment. I understand that the rental technicians are able to answer questions I may have as to the proper use of the Equipment but I have not relied on any advice or representation made by them or by the Supplier. I agree to return that Equipment in good order and condition to avoid any additional charges and that I will not be entitled to any refund or reduction in rental for early return of the Equipment.
3. I acknowledge that snowblades are not recommended by the Supplier for use by any person under 1.5 metres tall or under 15 years of age.
4. I acknowledge that the Supplier recommends that all snowboarders wear wrist guards and that all skiers and snowboarders wear helmets, but recognise that the decision to wear a helmet is a matter of personal or parental choice.
5. I agree to use the Equipment in a safe and responsible manner and to comply with the **Alpine Responsibility Code** and with all displayed signage and other directions of the Supplier.

6. [DOWNHILL SKI EQUIPMENT ONLY] I have made no misrepresentation in regard to my height, weight, age or skier type. (I acknowledge that this information is required in order to properly adjust the ski boot / binding settings). I agree that the setting appearing in the visual indicator windows on the binding correspond with the setting recorded on this form. I agree not to alter these settings.
7. I have read the Supplier's Privacy Policy and acknowledge that I understand that personal information will be collected, used and handled in accordance with that policy.

ACKNOWLEDGEMENT OF RISKS

I am aware that alpine skiing, snowboarding, x-country skiing, skiboarding, tobogganing and snowshoeing and all other snowsports involve inherent risks, dangers and hazards and that personal injury (and sometimes death) can occur as a result of these activities.

ALPINE SKIING: I understand that the ski boot/binding system will not release at all times or under all circumstances, that it is not possible to predict every situation in which the system will release, and that the system is no guarantee that the user will not be injured.

SNOWBOARDING/X-COUNTRY/SKIBOARDING/SNOWSHOEING/USE OF SHORT SKIS: I understand that the boot/binding system for this type of equipment is not designed to release and will not release under normal circumstances. I understand that therefore this system will not reduce my risk of injury during a fall.

HELMETS: I understand that a helmet designed for recreational snow sports use will help reduce the risk of some types of injuries to the user at slower speeds. I recognise that serious injury or death can result from both low and high energy impacts, even when a helmet is worn.

RELEASE OF LIABILITY ASSUMPTION OF RISK, WAIVER OF RIGHT TO SUE AND INDEMNITY

In further consideration of the rental to me of the Equipment, I hereby agree as follows:

1. That the Supplier shall have **NO LIABILITY** whatsoever in negligence, breach of contract, breach of statute or statutory duty (including the statutory guarantees contained in the **Competition and Consumer Act 2010** and the **Fair Trading Act 1999**) to me, my dependants, my legal representative or the user of the Equipment for personal injury or death suffered by me or the user arising in any way whatsoever from the rental or use of the Equipment, including the breakage, malfunction, unsuitability, design, manufacture, selection, installation, maintenance, or adjustment of the Equipment or in respect of the provision of or the failure to provide any warning, directions, advice, instructions or guidance as to the use of the Equipment. (collectively called "the use of the Equipment").
2. I acknowledge that the use of the Equipment and all associated activities are dangerous and have many inherent risks as a result of which personal injury and sometimes death can occur as a result of these activities and I accept and assume all risk of personal injury or death in any way whatsoever arising and hereby waive my right to sue the Supplier for all claims I may have for such personal injury or death in any way whatsoever arising from or in connection with the use of the Equipment and all associated activities.
3. I agree to hold harmless and indemnify the Supplier from any and all liability for any damage to property of or personal injury to any third party, resulting from my use of the Equipment.
4. That this Agreement (a) constitutes the entire agreement between myself and the Supplier; (b) is governed by the laws of the State of Victoria the Courts of which shall have exclusive jurisdiction, and; (c) if any part or provision is determined by a Court to be invalid or unenforceable all other parts and provisions shall still be given full legal force and effect.

ADDITIONAL TERMS AND CONDITIONS FOR SKI/BOARD LESSONS AND RECREATIONAL ACTIVITIES FOR CHILDREN

1. All medication must be handed to Falls Creek Snowsports School or the Mount Hotham Snowsports School ("**Suppliers**") prior to the parent/guardian leaving the child at the relevant Snowsports School. It is the parent's/guardian's responsibility to clearly label medicine containers with the child's name, the dose to be taken and when it should be taken.
2. All medications will be kept by the Suppliers and distributed as directed. If it is necessary or appropriate for the child to carry their own medication (eg asthma puffers, insulin etc) it must be with the knowledge and approval of both the parent/guardian and the Supplier's Snowsports School.
3. All information on the Supplier's Registration Form that is to be completed by a Parent or Guardian is intended to assist the Supplier in case of any medical emergency with the child. All medical information will, as far as is practicable, be held in confidence and will be stored where there will be restricted access, however you may access this information on request. All contact details and the Supplier's Registration Form will be retained in case they are needed for future use.
4. By signing the Supplier's Registration Form the parent/guardian authorise the Suppliers to take all steps considered reasonably necessary to protect the child's welfare during the child's participating in Lessons or recreational activities including taking steps to obtain emergency medical and/or dental treatment if required. Such treatment may include helicopter or ambulance transport or hospitalisation as well as anaesthesia and/or surgery if recommended by a duly qualified medical practitioner. The parent/guardian is responsible for all expenses incurred by the Supplier in respect of any such emergency services.
5. On behalf of the child the parent/guardian acknowledges and represents that:
 - 5.1 The Supplier, its employees, agents, ski instructors and contractors (collectively "**Supplier**") shall have no liability whatsoever in negligence, breach of contract or statute or statutory duty (including guarantees imposed by the **Competition and Consumer Act 2010** or by Part 2A of the **Fair Trading Act 1999**) to the child for any personal injury or death suffered by the child arising in any way whatsoever, whether direct or indirect or consequential, from the supply of recreational services to the child, including but not limited to activities organised at the Falls Creek site or the Mount Hotham site ("**Resort**") by the Suppliers, skiing, snowboarding, snowtubing, tobogganing, skiing or snowboarding lessons, all other snowsports, the use of ski lifts, all ski area services, facilities, the conditions, layout or design of ski runs or slopes or the presence of people or objects or any associated sporting activities or similar pursuits ("**Activities**").
 - 5.2 The Activities are dangerous and have many inherent risks which may cause personal injury or death. On behalf of the child, the parent/guardian assumes and accepts all risk of personal injury or death to the child arising from the Activities and waives the child's right to sue the Supplier for claims the child may have for such personal injury or death against the Supplier arising from or in connection with the Activities.

WARNING UNDER THE FAIR TRADING ACT 1999

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 the Supplier's Registration 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 32N of the **Fair Trading Act 1999**, the Supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign the Supplier's Registration Form, you will be agreeing that your rights to sue the Supplier under the Fair Trading Act 1999 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 is defined in the **Fair Trading (Recreational Services) Regulations 2004**.

NOTE ABOUT WARNING: The **Fair Trading Act 1999** requires that the above wording is stated on the Supplier's Registration Form. Where the words "you" or "your" are stated in the above warning, those words apply to "your child".

On behalf of the child the parent/guardian acknowledges that the child has sufficient skills to be able to safely and properly use a ski lift at the Resort, the terrain at the Resort contains natural and man made hazards which may or may not be marked, the child has equipment and clothing suitable for safely and properly undertaking the Activities, all snowboarders must wear wrist guards and all skiers and snowboarders must wear helmets, the child's equipment or possessions may be damaged or lost when undertaking the Activities, the child undertakes the Activities entirely at the child's own risk and with a prior acceptance of the risk of possible danger to the child, alpine weather is extreme and the child must wear suitable clothing and communication in the alpine environment is difficult and, in the event of an accident, rescue and medical treatment may not be readily available.

6. On behalf of the child the parent/guardian accepts and assumes all risks, dangers and hazards associated with recreational snowsports and the use of any facilities provided by or operated by the Supplier at the Resort.
7. The parent/guardian acknowledges and agrees that:
 - (a) the child will not consume alcohol or illicit drugs whilst participating in the Activities. If such use occurs the Supplier may exclude the child from any of its facilities at the Resort without refund or compensation;
 - (b) the child has been asked to observe all signs and to comply with all directions of the Supplier, not to access parts of the Resort marked as closed, to act safely at all times and the undersigned agrees to be fully responsible for any claim by third parties for loss or damage, whether personal or to property, resulting from any act or omission on the child's behalf or which is attributable in any way to the child's conduct and will fully indemnify and hold harmless the Supplier against any claims that may be brought against it arising in any way from the conduct of the child;
 - (c) the Supplier has an unrestricted right to deny the child access to any of its facilities which includes ski lifts and terrain of the Resort if the child acts in any way which, in the sole opinion of the Supplier, is deemed to be reckless or which in the sole opinion of the Supplier damages the terrain;
 - (d) to the extent to which clauses 1 and 2 of the Supplier's Registration Form are deemed ineffective by operation of law if the undersigned or the child, or any person acting in a representative capacity for the child, commences legal proceedings against the Supplier any damages recovered shall be reduced by such an extent as is just and equitable having regard to the child's share in the responsibility for any such damage, loss or injury;
 - (e) the Supplier reserves the right to close any of its lifts or facilities at the Resort and in such situation there will be no refund or compensation;

- (f) the child is in good health and that there are no special problems associated with the care of the child and that the undersigned has left no special instructions regarding the child that have not been listed on the Supplier's Registration Form;
 - (g) the Supplier is collecting, using and dealing with my personal information in accordance with the Supplier's Privacy Policy; and
 - (h) the Supplier's Registration Form constitutes the entire agreement between the parent/guardian and Supplier, is governed by the laws of the State of Victoria, the Courts of which shall have exclusive jurisdiction, and if any part or provision is determined by a Court to be invalid or unenforceable all other parts and provisions shall still be given full legal force and effect.
8. By signing the Supplier's Registration Form the parent/guardian is not relying on any oral or written representations or statements made by Supplier with respect to the safety of the facilities of Supplier or of the terrain at the Resort other than what is set out in the Supplier's Registration Form.
9. For your child's safety, the Supplier requires a completed Supplier Registration Form for each child participating in Falls Creek Snowclub 4 Kids and Mount Hotham Kids Zone.