

Rail Tickets Industry Sales Site Terms and Conditions

These are important terms and conditions that will govern your use of the Rail Tickets Website – please read carefully before using this website or making any booking

1. Acceptance

- 1.1 Permission to use the Rail Tickets Site and make bookings on the Rail Tickets Site is conditional upon you, the Agent, agreeing to the terms and conditions of use set out below ('Conditions'). Do not proceed until you have read all of these Conditions and wish to become licensed to use the Site. These Terms and Conditions will bind you and all your Staff.
- 1.2 When you make a booking on this website, you will be deemed to have accepted the Conditions.

2. Interpretation

'Agent' means the travel agent entity whose application for registration has been accepted by Rail Tickets (whether in whole or in part).

'Credit Card' means a credit or charge card issued by or carrying the mark of either, American Express, Diners Club International, Mastercard, Visa, or any other acceptable form of payment as advised by Rail Tickets from time to time.

'Damages' means liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis and whether incurred by or awarded against a party).

'Documentation' means any documentation supplied with the Rail Tickets Site.

'Rail Tickets' means Stella Travel Services (Australia) Pty Limited (ACN 003 237 296) trading as Rail Tickets .

'Rail Tickets Authorised Agent' means an Agent who access the Rail Tickets Site to make a booking.

'Rail Tickets Booking Facility' has the meaning given to it in **clause 5.3**.

'Rail Tickets Site' means those pages on www.railtickets.com.au.

'Staff' means officers, employees, contractors, subcontractors and agents.

'Term' has the meaning given to it in **clause 8.1**.

3. Licence

- 3.1 Rail Tickets grants to the Agent a non-exclusive licence to use the Rail Tickets Site, make bookings on the Rail Tickets Site and use any Documentation to the extent required to make and service those bookings ('Licence').
- 3.2 The Agent acknowledges that the Licence is not exclusive to it, and that Rail Tickets may license any person, including the Agent's competitors, to use the Rail Tickets Site.
- 3.3 The Licence terminates automatically on termination of these Conditions.
- 3.4 In making bookings on the Rail Tickets Site and using any Documentation, the Agent is acting as the agent of Rail Tickets.

4. Agent's obligations

- 4.1 The Agent must:
 - (a) hold a current Australian travel agency licence with the relevant industry body throughout the Term and notify Rail Tickets immediately if such licence is revoked, cancelled or not renewed;
 - (b) not copy, reproduce, translate, adapt, vary or modify the Rail Tickets Site or Documentation without the express written consent of Rail Tickets, except as expressly authorised by these Conditions;
 - (c) complete, update and maintain all registration details;
 - (d) supervise and control the use of the Rail Tickets Site and Documentation in accordance with these Conditions;
 - (e) ensure its Staff who have authorised access to the Rail Tickets Site and Documentation are made aware of, and comply with, these Conditions;
 - (f) ensure its Staff receive adequate training in the use of the Rail Tickets Site;

- (g) not provide or otherwise make available the Rail Tickets Site or Documentation in any form to any person except as expressly authorised by these Conditions;
- (h) ensure all information supplied to Rail Tickets is accurate and immediately notify Rail Tickets of any change to such information;
- (i) update user profiles without delay;
- (l) not allow customers of the Agent direct access to the Rail Tickets Site; and
- (m) not create any hyperlink from the Agent's web site to the Rail Tickets Site (including without limitation any Rail Tickets Booking Facility) unless the parties have otherwise agreed in writing.

5. Making Booking - Rail Tickets Site

- 5.1 Rail Tickets may request such information as it reasonably requires from the Agent. The Agent must provide Rail Tickets with all information requested by Rail Tickets promptly upon receipt of the request.
- 5.2 Prior to making a booking for a customer through the Rail Tickets Booking Facility, the Agent must provide the customer with the relevant terms and conditions in respect of the booking issued by Rail Tickets from time to time. This includes Rail Tickets' *General Booking Conditions* and any particular conditions relating to the product being purchased.
- 5.3 The terms and conditions relating to the payment of any commission by Rail Tickets in respect of bookings made through the Rail Tickets Booking Facility will be set out in the Rail Tickets Agency Agreement.
- 5.4 For each booking made through the Rail Tickets Booking Facility which is to be paid for by Credit Card, the Agent will obtain a written authority from the customer authorising the use of the Credit Card. If Rail Tickets is required to refund any amount as a result of the Agent's failure to obtain such authorisation, the amount becomes a debt immediately payable to Rail Tickets and Rail Tickets may set off this amount against any payment due to the Agent under these Conditions or any other arrangement.

6. Liability

- 6.1 The Agent acknowledges that the Rail Tickets Site, the Rail Tickets Booking Facilities and Documentation cannot be guaranteed error free and further acknowledges that the existence of any such errors will not constitute a breach of these Conditions.
- 6.2 Rail Tickets disclaims any implied warranties in relation to the Rail Tickets Site or Rail Tickets Booking Facilities except that, if any statute implies terms into these Conditions which cannot be lawfully excluded, such terms will apply to these Conditions, save that the liability Rail Tickets for breach of any such implied term will be limited, at the option of Rail Tickets, to any one or more of the following:
 - (a) the replacement of goods to which the breach relates or the supply of equivalent goods;
 - (b) the repair of such goods;
 - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (d) the payment of the cost of having the goods repaired.
- 6.3 Subject to **clauses 6.2** and **6.4**, the liability of Rail Tickets under or in relation to these Conditions (whether the claim is based in contract, tort (including negligence), equity, statute (to the maximum extent permitted by law), or otherwise), is limited to:
 - (a) the amount of any loss or damage suffered by the Agent relating to personal injury or tangible property damage; and
 - (b) for all other claims, the amount of any direct loss or damage suffered by the Agent.
- 6.4 Rail Tickets will not be liable under or in relation to these Conditions for any special, indirect, incidental, consequential or economic loss or damage (including loss of profits, revenue, anticipated savings, bargain, opportunity or goodwill) or any loss of or damage to data, whether or not the possibility of those losses or damages being suffered is brought to the attention of Rail Tickets.
- 6.5 Rail Tickets is not liable for and the Agent indemnifies and holds harmless Rail Tickets and all of its related bodies corporate and their Staff in respect of all Damages suffered or incurred by any of those indemnified as a result of:
 - (a) any breach of these Conditions by the Agent or any of the Agent's Staff;
 - (b) any actual or alleged infringement of any intellectual property rights by the Agent or any of the Agent's Staff;
 - (c) any misuse of the Rail Tickets Site or Rail Tickets Booking Facilities by the Agent, its Staff (including former Staff), a customer of the Agent or any other person not authorised to access or use the Rail Tickets Site or Rail Tickets Booking Facilities (including, without limitation any misuse or unauthorised use of the passwords and logons);
 - (d) unauthorised access or use of the Rail Tickets Site or Rail Tickets Booking Facilities by the Agent or its Staff or a customer of the Agent;
 - (e) any misuse or unauthorised use of the customer's or Agent's Credit Card; and

(f) use of the Rail Tickets Site or Rail Tickets Booking Facilities for any purpose not authorised by Rail Tickets.

6.6 The Agent acknowledges that it has exercised its independent judgment in acquiring access to the Rail Tickets Site and has not relied on any representation made by Rail Tickets, any of its related bodies corporate or any of its Staff which has not been stated expressly in these Conditions or upon any descriptions or illustrations or specifications contained in any document including catalogues or publicity material produced by Rail Tickets.

7. Intellectual Property Rights

7.1 The Agent acknowledges that it does not acquire any intellectual property rights in the Rail Tickets Site and Documentation except for those rights expressly set out in these Conditions.

7.2 The Agent must not during or any time after the expiry or termination of these Conditions permit any act which infringes the intellectual property rights in the Rail Tickets Site and, without limiting the generality of the foregoing, the Agent specifically acknowledges that it may not copy the Rail Tickets Site or Documentation except as otherwise expressly authorised by these Conditions.

7.3 The Agent must obtain the prior written consent of Rail Tickets to the use of the Rail Tickets name or logo or any other intellectual property of any Rail Tickets in any material, including without limitation any material on the Agent's web site.

8. Term and Termination

8.1 These Conditions commence upon acceptance by the Agent (as detailed above under the heading "Acceptance") and continue until terminated in accordance with these Conditions ('Term').

8.2 These Conditions may be terminated:

(a) by either party at any time upon 30 days written notice to the other party; and

(b) by Rail Tickets immediately if the Agent:

(i) fails to pay any amount due to Rail Tickets pursuant to these Conditions;

(ii) is in breach of any of these Conditions;

(iii) has its travel agency licence cancelled or revoked, or it otherwise expires or lapses;

(iv) disposes of the whole or any part of its assets, operations or business other than in the normal course of business;

(v) ceases to be able to pay its debts as they become due;

(vi) ceases to carry on business;

(vii) being a corporation, becomes the subject of insolvency proceedings, or has an administrator, a liquidator or receiver and/or manager or other like person appointed over any of its assets;

(viii) being a firm or partnership, becomes the subject of an event of bankruptcy or is dissolved; or

(ix) damages the Site or Documentation.

8.3 Upon termination, the Agent must not access the Rail Tickets Site and must destroy any remaining copies of the Documentation or otherwise return or dispose of the Documentation in the manner directed by Rail Tickets.

8.4 Termination of these Conditions will not affect any rights or remedies that Rail Tickets may have otherwise under these Conditions or at law.

9. Cookies

9.1 Cookies are small pieces of data stored on the web browser on your computer. Any web server (including this one) may:

(a) store one or more cookies in your browser; or

(b) request your browser to transmit this data back to the web server; or

(a) request your browser to transmit a cookie which has been stored on your browser by another site within the same internet domain.

9.2 The Rail Tickets Site may store cookies on your web browser or PC in order to improve service for you on your subsequent visits to the Rail Tickets Site.

9.3 By using cookies, web sites can track information about visitors' usage of the site, providing customised content, or even the use of password protection. Most web browsers can be configured to notify the user when a cookie is received, allowing you to either accept or reject it. You may also inspect the cookies stored by your web browser at any time and remove any that you do not want.

9.4 If you disable the use of cookies on your web browser or remove or reject specific cookies from the Rail Tickets Site or linked sites, then you may not be able to gain access to all the content and facilities of the Rail Tickets Site.

10. Use of Personal Information and Confidential Information

- 10.1 The Agent acknowledges that it does not acquire any ownership of the data entered via the Rail Tickets Site.
- 10.2 The Agent must comply with the Privacy Act 1988 (Cth), all other applicable privacy legislation, all guidelines issued by the Office of the Federal Privacy Commissioner and similar regulatory bodies, and all reasonable directions of Rail Tickets relating to personal information referred to in **clause 10.3**.
- 10.3 The Agent must ensure that a copy of the Rail Tickets Privacy Notice (as applicable) is made available to all customers before (or, if that is not practicable, as soon as practicable after) the Agent or its Staff collects personal information about an individual in connection with a product or service supplied by Rail Tickets.
- 10.4 The Agent must not, directly or indirectly use personal information collected in connection with these Conditions except to the extent necessary to exercise its rights or perform its obligations under these Conditions.
- 10.5 The Agent acknowledges that the information contained in the Rail Tickets Site and Documentation is confidential ('**Confidential Information**'). The Agent must take all reasonable steps to safeguard Qantas' rights of ownership and confidentiality of the Rail Tickets Site and Documentation.
- 10.6 The Agent must not disclose any Confidential Information to any person unless required by law to do so or with the prior written consent of Rail Tickets.
- 10.7 On termination of these Conditions, or earlier on reasonable request by Rail Tickets, the Agent must promptly return to Rail Tickets or destroy any or all copies of Confidential Information, in which case any right to use, copy and disclose that Confidential Information ceases.

11. General

- 11.1 Rail Tickets and all of its related bodies corporate will not be responsible for any delay or failure in performance resulting from anything outside its reasonable control, including without limitation delays or failures caused by third parties.
- 11.2 The Licence or these Conditions may not be dealt with in any way by the Agent (whether by novation, assignment, sub-licensing or otherwise) without the prior written consent of Rail Tickets.
- 11.3 Failure or neglect by either party to enforce at any time any of the provisions of these Conditions will not be construed or deemed to be a waiver of that party's rights under these Conditions.
- 11.4 Nothing in these Conditions gives rise to any relationship of joint venture, partnership or employer and employee between Rail Tickets and the Agent or between Rail Tickets and any Staff of the Agent.
- 11.5 The Agent must comply with all laws and regulations and any Rail Tickets instructions or directions relating to or connected in any way to the provision of travel services (including without limitation the Privacy Act 1988 and the Competition and Consumer Act 2010).
- 11.6 The carriage of passengers, baggage and cargo by air is subject to the Conditions of Carriage and regulations of the relevant carrier. Copies of these are available on request from their offices or Travel Centres.
- 11.7 Rail Tickets may make changes to the Rail Tickets Site without notice to you. Rail Tickets may make changes to these Conditions from time to time. Updated Conditions will be placed on the Rail Tickets Site and Rail Tickets may give you notice of those changes (including by e-mail).
- 11.8 These Conditions are governed by and construed according to the law of the State of New South Wales, Australia and each party submits to the non-exclusive jurisdiction of the courts of that State.
- 11.9 A party notifying or giving notice under these Conditions must give notice in writing and sent to the e-mail or postal address of the other party as notified by the other party from time to time. The Agent's address for notices will be as stated on the registration form unless otherwise notified. Such a notice is received if left at the recipient's address, on the date of delivery, if sent by prepaid post, three days after the date of posting or if sent by e-mail, immediately provided there is no error in transmission.
- 11.10 These Conditions:
 - (a) constitute the entire agreement between the parties as to its subject matter; and
 - (b) in relation to that subject matter, supersede any prior understanding or agreement between the parties, except if the Agent has a separate written agreement in relation to override commission, in which case, the terms of that agreement will also apply. If there is

any inconsistency between the terms of such override agreement and these Conditions, the terms of that override agreement apply to the extent of the inconsistency.