



Terms & Conditions

Dolphin Swim Australia Pty Ltd ACN 138 208 081 atf **Dolphin Swim Australia Unit Trust** ABN 95 706 319 134 (“DSA”) offers participants the opportunity to take part in its swim with dolphins (“the Swim”). The terms and conditions below and the attached Risk Warning form your agreement with DSA. By signing you enter into an agreement with DSA to take part in the Swim on the following terms and conditions:

1. The Swim

- (a) DSA will make reasonable endeavours to maintain advertised details for The Swim but reserves the right to add, withdraw, substitute and/or vary advertised locations, prices and departure times for The Swim without notice for reasons of safety, security, or any other matter out of the reasonable control of DSA.
- (b) All participants are required to arrive at 45 minutes before the departure time. The departure time is 5.45am. Arrival after this time may result in the participants exclusion (at the sole discretion of DSA) from The Swim without refund.
- (c) All participants must be aged between 7 and 70 years old. Any participant under the age of 18 years must remain in the immediate presence and control of a supervising parent or guardian during The Swim and their participation will be subject to the authorisation of their parent or guardian.
- (d) All participants must sign a Risk Warning. Each participant and where applicable, their parent or guardian, takes part in The Swim at their own risk.
- (e) DSA in its absolute discretion reserves the right to exclude any participant from The Swim where that participant is disruptive, refuses to obey the reasonable directions of DSA, or in the reasonable opinion of DSA appears to be affected by alcohol or drugs. DSA reserves the right to exclude participants who are deemed too unfit or unhealthy for the activity.
- (f) DSA does not allow the use of Go Pro / underwater cameras or electronic devices in the water during the swim.
- (g) Price for a Swimmer includes a ‘Swim with Dolphins’ guarantee. If you do not swim with dolphins, you may return within 12 months of original booking for free until you complete the swim.
- (h) Visitors who do not swim with dolphins and cannot return may apply for a 50% refund to the same card made for booking.

2. Payments and Bookings

- (a) Payment for The Swim or a Gift Voucher is non-refundable and non-transferable except with prior written permission of DSA. Refunds will only be made to the participant who purchased The Swim from DSA.
- (b) Participants can only change the date of The Swim up to seven (7) days prior to the original date. Any such change is subject to payment of an administration fee.
- (c) Payments made by credit card are subject to a non-refundable surcharge.
- (d) All prices are quoted in Australia Dollars (\$AU).
- (e) Gift vouchers expire twelve (12) months from the date of purchase.
- (f) Gift vouchers are not redeemable for cash.

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3. Shark Shield (TM) Deterrent

(a) DSA employs the use of Shark Shield (TM) Deterrent on The Swim.

(b) DSA cannot provide advice about the suitability of this equipment in relation to any participant's particular health concerns. It is the participant's responsibility to satisfy any concerns they may have about their individual health circumstances and the use of an electromagnetic device. Visit the product website: <http://www.sharkshield.com> for information.

4. Restrictions on Photography and Release

(a) For safety reasons participants are not permitted to take items into the water (including but not limited to cameras, video recording devices, mobile phones or other personal items).

(b) Participants may use cameras or other video recording devices above water but for safety reasons must immediately follow the directions of DSA staff.

(c) All photographs and video recordings ("Images") remain copyright to DSA. Images may be used for private or domestic purposes by the participant but must not be used for any commercial purpose without prior written consent from DSA.

(d) DSA and its authorised agents and contractors have the right to use the Images in any media for any purpose (except pornographic or defamatory) including but not limited to advertising, promotion, marketing and packaging for any product or service. Images may be combined with other images, text, graphics, film, audio, audio-visual works and may be cropped, altered or modified without compensation or prior notice to any participant.

5. Cancellation by the Participant

(a) Where a participant wishes to cancel The Swim, all applications for cancellation:

- i. must be made in writing;
- ii. attract an administration fee;
- iii. when made within 7 days of The Swim date are charged at 50% of The Swim cost;
- iv. when made within 48 hours of The Swim date are charged at 100% of The Swim cost.

6. Cancellation by DSA

(a) For safety or other reasonable reasons DSA may in its absolute discretion decide to cancel The Swim.

(b) Where DSA cancels The Swim:

- i. participants may re-schedule at their convenience without any administrative fee subject to availability.
- ii. where a participant is unable to re-schedule and subject to an administration fee they may:
 - A. Receive a full refund (less credit card surcharge); or
 - B. Transfer The Swim to a third party subject to the third party booking The Swim within twelve (12) months of the transfer date, subject to availability.
- iii. the participant will have no claim against and DSA will not be liable for any claim for additional expenses, travel expenses, out of pocket expenses or accommodation expenses relating to the cancellation.

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7. Liability

(a) Any express or implied guarantees, warranties, terms or conditions relating to these terms or provision of services or products contemplated by these terms are excluded to the maximum extent permitted by law.

(b) Nothing in these terms excludes, limits or modifies any guarantee, warranty, term or condition imposed by any Law which cannot lawfully be excluded, limited or modified.

(c) To the extent permitted by section 139A Competition and Consumer Act 2010 (Cth) ("the Act") DSA excludes its liability for:

- i. death
- ii. personal injury
- iii. the contraction, aggravation, acceleration of a disease; and
- iv. the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to an individual or community:
 - A. that is or may be harmful or disadvantageous to an individual or community; or
 - B. that may result in harm or disadvantage to an individual or community.

(d) The participant acknowledges and agrees that where any of the consumer guarantees under the Act apply to the services supplied by DSA, and the Act operates to prohibit a provision in this agreement excluding, restricting or modifying such consumer guarantees, then DSA to the fullest extent permitted by law, will be limited, at the option of DSA, to its liability in relation to:

- i. services to:
 - A. supply of the services again; or
 - B. payment of the cost of having the services supplied again;
- ii. products to:
 - A. replacement of the products or supply of equivalent products;
 - B. repair of the products;
 - C. payment of the cost of replacing the products or of acquiring equivalent products.

(e) Subject to clauses 7(a), 7(b), 7(c) and 7(d) above, and to the maximum extent permitted by law DSA is not liable for any loss or damage to personal property, however arising including but not limited to:

- i. Failure to follow directions of DSA, its officers, staff or agents; or
- ii. Negligent act or omission of DSA, its officers, staff or agents.

(f) The participant acknowledges that they participate in The Swim at their own risk and to the extent that the law provides, waive, release and discharge all and any claim, right or cause of action however arising including from any negligent act or omission of DSA, its officers, staff or agents, whether or not presently ascertained, immediate, future or contingent, which they may otherwise have for or arising out of loss of life or injury, damage or loss of any description whatsoever and howsoever caused which they may suffer or sustain in the course of or consequent upon their participation in The Swim.

8. General

(a) A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

(b) The participant acknowledges that the laws of New South Wales apply to these terms and the participant submits to the non-exclusive jurisdiction of the Courts of New South Wales in relation to any dispute.