

Aerial Skydiving Pty Limited

ABN 94 067 340 774

Parachuting Contract – PARACHUTING IS DANGEROUS

The following conditions must be read carefully:

1. “The parachutist” means the individual who signs this contract and agrees to be bound by its terms and includes a guardian of that individual if the individual is under 18 years of age.

2. **Acceptance**

Guardian Acceptance (persons under 18)

I, (full name of applicant)

I, (full name of Guardian)

.....
of (residential address of applicant)

.....
of (residential address of Guardian)

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the parachutist, hereby agree to be bound by the terms of this contract with Aerial Skydiving Pty Ltd and the persons named and described in **Schedule 1**, hereinafter jointly and severally referred to as “the Providers”. The providers agree to permit me to use their premises, aircraft and facilities for parachuting and to instruct me in parachuting and related activities (“the Service”) upon and subject to the following terms and conditions:

- (a) **Club Fees** – The parachutist will pay on demand the prescribed or stated fees for the Service. Such fees may be notified to the parachutist verbally or by letter or memorandum or by notice displayed in the Providers’ premises or premises occupied by the providers.
- (b) **Federation Fees** – Upon executing this contract the parachutist will become a member of Australian Parachute Federation (“APF”). The parachutist acknowledges, agrees and consents to becoming a member of the APF. Upon the parachutist becoming a member of APF the APF Constitution will comprise a contract between the parachutist and APF and the parachutist will be bound by it and any regulations made under it. The parachutist will pay on demand the prescribed or stated APF membership fees.
- (c) **Exclusion of Liability** – Except where provided or required by law and as such cannot be excluded, the parachutist agrees that it is a term of this contract and also of his/her membership of APF that the Providers are absolved from all liability however arising from injury or damage however caused (whether fatal or otherwise) arising out his/her membership of APF and/or undertaking the Service.
- (d) **Release & Indemnity** – In consideration of APF accepting the parachutist as a member the parachutist:
- (i) releases and forever discharges APF from all Claims that s/he may have or may have had but for this release arising from or in connection with his/her membership of APF and or undertaking the Service; and
- (ii) indemnifies, will keep indemnified and hold harmless APF to the extent permitted by law in respect of any Claim by any person including but not only another Member of APF arising as a result of or in connection with his/her membership and/or undertaking the Service.
- In this clause (d) “Claims” means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising but does not include a claim in respect of any action, suit, etc made by any person entitled to make a claim under a relevant APF insurance policy or under the APF Constitution or any Regulations.
- (e) **Insurance** – The parachutist acknowledges and agrees that the fees for the Service do not include personal injury insurance. The parachutist can, in his/her own interests, seek and obtain personal injury insurance.
- (f) **Medical Conditions** – The parachutist warrants that s/he (a) is and must continue to be medically and physically fit and able to undertake the Service, (b) is not a danger to him/herself or to the health and safety of others, (c) has not at any time suffered any blackout, seizure, convulsion, fainting or dizzy spells and (d) is not presently receiving treatment for any condition, illness, disorder or injury which would render it unsafe for the parachutist to take part in parachuting or flying including undertaking the Service.
- (g) **Inherent Physical Contact** – The parachutist acknowledges and accepts that close physical contact with the Providers is inherent in the Service. The parachutist accepts such close physical contact is necessary to undertake the Service.
- (h) **Exclusion of Applicant** – The parachutist warrants that he or she has not at any time been excluded from parachuting by a medical practitioner or any person or entity including the APF and its constituent Area Councils and Clubs. The parachutist acknowledges and agrees that the Providers may demand a medical certificate or opinion as to the fitness of the parachutist from a qualified medical practitioner PRIOR to the parachutist undertaking the Service.
- (i) **Rights of a Consumer** – The Service is a “recreational service” as defined under the *Trade Practices Act 1974*. Where the parachutist is a consumer, as defined by any relevant law such as the *Trade Practices Act 1974* or any *Fair Trading Act*, then certain terms and rights will be implied into the contract for the supply of the Service for the benefit of the parachutist. These terms and rights, and any liability of the Providers or other supplier flowing from them, are excluded, restricted or modified by the provisions of this contract.

- (j) **Wavier and Indemnity** – In all other cases and except where inconsistent with the above, the parachutist for him/herself, his/her executors, administrators, dependents and other personal representatives, hereby absolves and indemnifies and will keep indemnified the Providers and all their servants, agents, employees and other students or persons under the Providers’ control (**the “Indemnified”**) from all liability howsoever arising for injury or damage (including but not limited to the parachutist’s person, whether fatal or otherwise, property and personal belongings) however caused including by the negligence of the indemnified, arising out of or participating in parachuting, training to parachute, flying in any aircraft being used for or in connection with parachuting or in anyway caused by, or arising out of, any activity carried on by the indemnified including the provision of the Service.
- (k) **Parachuting done at Parachutist’s own Risk** – Any person parachuting, training to parachute, flying in any aircraft being used for or in connection with parachuting or participating in any activity carried on by Aerial Skydiving Pty Ltd may only do so on the distinct understanding that they do so entirely at their own risk.
- (l) **Acceptance** – Performance of the Providers’ obligations under the contract may be effected by any one or more of the providers either jointly or severally.
- (m) **Bar to proceedings** – The Providers (or any of them including APF) may plead this contract as a bar to proceedings now or in the future commenced by or on behalf of the parachutist or by any person claiming through the parachutist. Where the parachutist seeks to commence proceedings against the Providers or any of them the parachutist:
- (i) will commence those proceedings in the Australian Capital Territory (“ACT”); and
 - (ii) where the parachutist seeks to commence proceedings in another jurisdiction, consents to removing those proceedings to the ACT including consenting to any application made by the Providers or any of them to remove the proceedings to the ACT; and
 - (iii) will pay the costs of any application made by the Providers or any of them under paragraph (ii) of this clause and will consent to any application for security of costs application made at any time by the Providers or any of them; and
 - (iv) consents to paying the Providers’ legal defence costs of the proceedings (on a solicitor client basis) where the Providers successfully defend the proceedings.
- (n) **Governing Law** – This contract is governed by the laws of the ACT, and the Courts of the ACT shall have exclusive jurisdiction to entertain any action in respect of any such agreement.
- (o) **Statement of Understanding** – I, the parachutist have read, or have had read to me the above conditions and having understood the same, I consent to the activities proposed.
- (p) **Prevailing conditions** – The parachutist acknowledges and agrees that:
- (i) parachuting and the Service can and will be affected by the weather which may change without warning; and
 - (ii) despite careful packing, the parachute may open abruptly (ie experience a hard opening) and the parachutist may suffer an injury; and
 - (iii) there is an element of “luck” in undertaking parachuting over which the Provider does not have control.
- (q) **Entire agreement** – This agreement (and the documents to which it refers) constitutes the entire agreement between the parties in respect to the Service and supersedes all other agreements, understandings and representations and negotiations with the Service.
- (r) **Warning** – Parachuting and flying in parachuting aircraft is inherently dangerous. Serious accidents can & often do happen which may result in the parachutist suffering injury to person and/or property or being killed. The parachutist has voluntarily read and understood this warning and accepts and assumes the inherent risks in parachuting and flying in parachuting aircraft.

PLEASE NOTE THE FOLLOWING:

If the *Trade Practices Act 1974* or similar State laws operates so as to prevent the exclusion, restriction or modification of warranties otherwise implied by those laws then the liability of the Provider for breach of warranties is limited to:

- (i) the re-supply of the parachuting instruction and related activities; or
- (ii) the payment of the cost of having the parachuting and related activities supplied again

Signed (*Parachutist*)..... Date2011

in the presence of (signature of witness)

[A guardian must sign this contract if the parachutist is under the age of 18]

Aerial Skydiving Pty Limited
APF CLUB – APPLICATION FOR MEMBERSHIP

1. **HEALTH DECLARATION: Please tell us if you answer YES to the following:-**

Are you prescribed drugs which may impair reaction time or judgement? YES / NO

If YES, what drugs)

Have you been SCUBA diving in the last 24 hours? YES / NO

If yes, give details of the depth and duration of the dive

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Do you have any medical condition which might render it unsafe for you to go flying or parachuting? Note that you are required to respond "Yes" to this item (and provide details below) if you have previously suffered any dislocation, break or fracture to your shoulders, hips, back or legs. YES / NO

If yes, give details

Note: if the answer is YES to the medical disclosure the club may require you to obtain and provide a medical certificate.

2. **EXCLUSION OF APPLICANT – Have you ever been excluded from parachuting in the past by a medical practitioner or any other person or entity? YES / NO**

If yes, give details

3. **DECLARATION OF UNDERSTANDING**

Parachuting is Dangerous

I have read and understood the terms of the Parachuting Contract or if I did not understand the terms of the Contract, I requested an independent person to explain them to me.

Parachutist Signature Dated.....2011

Witness Signature

4. **GUARDIAN'S CONSENT: (for all persons under 18 years) – I hereby certify and decree that all the information contained in the declarations above is true and accurate.**

Signature Relationship to parachutist

Address Phone Contact

SCHEDULE 1

In addition to Aerial Skydiving Pty Ltd, the providers in respect of this agreement include:

- (a) The ACT Government and any other landowner and their officers and employees where any parachute operations by Aerial Skydiving Pty Ltd may take place.
- (b) The staff, instructors, jumpmasters, ground communication officers, target assistants, safety officers, parachute packers and riggers, and aircraft pilots and operators including but not limited to: (i) The Australian Parachute Federation; (ii) The ACT Parachute Council; (iii) Graeme Windsor, (iv) Chris Windsor, (v) Geoffrey Campbell, (vi) Chris McKeown.

PERSON TO NOTIFY IN THE EVENT OF AN EMERGENCY

Name;

Address;

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Relationship; Telephone