

# Abercrombie & Kent

USA DMC

## TERMS & CONDITIONS

### 1. CONTRACTING PARTIES

These Terms and Conditions are legally binding between the traveller(s) and Abercrombie & Kent USA DMC LLC, herein after referred to as "A&K" or "we".

### 2. ACCEPTANCE OF THESE TERMS

PLEASE NOTE: Acceptance of a quotation from A&K constitutes acceptance of these Terms and Conditions which take effect as soon as A&K issue you with a confirmation.

### 3. ACCOMMODATION:

All accommodation, room type(s) and specification are as shown in the itinerary.

### 4. MEALS:

Meals are as shown in the itinerary.

### 5. TRANSFERS:

Transfers are provided on arrival and departure from airport to hotel and return only where specified in the itinerary.

### 6. ITINERARY:

Accommodation and arranged sightseeing are subject to change at any time due to unforeseen circumstances or circumstances beyond A&K's control. Every effort will be made to operate tours as planned, but alterations may occur after the final itinerary has been issued. A&K also reserves the right to withdraw a tour or any part of it, to make such alterations to the itinerary or the tour inclusions as it deems necessary or desirable, in A&K's sole discretion, and to assess to tour members any expenditures or losses caused by delays or events beyond its control.

In case of any appreciable variation in the tour price due to these circumstances, A&K reserves the right to make adjustments to the tour costs as necessary.

### 7. SPECIAL REQUESTS:

Specific requests should be advised at time of booking. Please note that every effort will be made to secure special requests, however; they cannot be guaranteed.

### 8. TRANSPORTATION:

Transportation will be as specified in the itinerary.

### 9. BAGGAGE:

A&K provides handling of baggage only as specified in the quotation. Weight restrictions for baggage on some routes on internal/domestic flights may apply; details of which will be provided with pre-tour documentation. Baggage and personal effects are at the owner's risk throughout the tour and A&K assumes no liability for lost or damaged baggage. Baggage insurance is strongly advised.

Please check with your carrier for other baggage restrictions applicable to your flight.

### 10. TAXES AND GRATUITIES:

Hotel taxes as imposed by city and state governments are included. Airport taxes are included where specified in the itinerary.

Gratuities for guides, drivers, porters, camp staff, ship crew and Tour Managers are not included and are at the discretion of the traveller.

### 11. EXCLUSIONS:

The cost of obtaining passports, visas, excess baggage charges, items of a personal nature such as drinks, laundry, telephone calls, fax charges and excess baggage charges unless expressly included in writing, are not included in the tour price.

### 12. PRICES & ARRANGEMENTS:

The tour price includes planning, handling and operational charges and is quoted based on the current rates of exchange and tariffs. Entrance fees as part of scheduled sightseeing tours are also included in this price. This price is subject to revision in line with changes in foreign currency, tariff rates, taxes etc.

### 13. PHOTOGRAPHY:

A&K reserves the right to take photographs during the operation of any program or part thereof and to use them for promotional, marketing or advertising purposes. By booking a program with A&K, travellers acknowledge that A&K is the owner of the photograph(s) and agree to allow their Image (as defined below) to be used in such photographs, which may thereafter be used by A&K and its subsidiaries and affiliates, advertising agencies and successors in interest for advertising and marketing purposes, without any consideration from A&K, its

subsidiaries, affiliates or licensees or their successors and assigns, in perpetuity, throughout the universe, and in all media now known or hereafter devised.. Travellers who prefer that their images not be used must notify A&K in writing at 1919 14<sup>th</sup> Street, Suite 700, Boulder, CO 80302 prior to final payment and they will be exempted from this photography waiver clause. If such written notice is not timely provided, the travellers, individually and on behalf of any minor child traveling with them, have granted unrestricted rights and permission to:

- (i) copyright and use, re-use, publish, and republish their image, identity likeness, name, voice, interview, statements, video clips and sound recordings, and/or photographic portraits or pictures in which traveller(s) may be included intact or in part, composite or distorted in character or form (an "Image"), without restriction as to changes or transformations in conjunction with their own or a fictitious name, or reproduction hereof in color or otherwise;
- (ii) incorporate traveller(s) Image (as may be edited) into any and all manner of media and forms of expression now or hereafter known, including without limitation, movies, print, sound and silent films, videotape, broadcasts of all kinds, web based materials, photographic slides, computer disks, photographs, television and radio programs, or otherwise; and
- (iii) use and license others to use the Image (as edited), including unrestricted use for publicity, advertising, trade, or sales promotion (collectively referred to as "Advertising Material") or any other purpose whatsoever.

The traveller(s), individually and on behalf of any minor child traveling with them, further waives any equitable remedies against A&K and releases A&K, its subsidiaries, affiliates, licensees and their successors and assigns from any and all claims and liability for damages for:

- (i) libel, slander, invasion of privacy, right of publicity, trademark infringement, unfair competition, copyright infringement or any other claim based upon the use of the traveller(s), individually and on behalf of any minor child traveling with them, voice,

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- statements and/or any Image(s); or
- (ii) any blurring, distortion, alteration, optical illusion, or use in composite form, whether intentional or otherwise, that may occur or be produced in the taking or reproduction of their voice, statements and/or Image, or in any processing tending towards the completion of the finished product or any Advertising Material.

The traveller(s), individually and on behalf of any minor child traveling with them, acknowledge that there were no promises of any compensation for such use by any of such parties or by anyone associated with any such party and that A&K exclusively owns all rights to the Advertising Materials irrespective of the form in which they are produced or used.

The use of drones for photography, or any other purpose, is forbidden on any A&K trip unless permission has been previously sought from, and granted by, A&K, and is also subject to applicable laws. This release will in all respects be governed by and interpreted, construed, and enforced in accordance with the laws of the State of Colorado and traveller(s), individually and on behalf of any minor child traveling with them, submit to binding arbitration in accordance with Paragraph 31.

## 14. DESCRIPTIONS AND IMAGERY:

All photographs, imagery and descriptions used by A&K online and within promotional documentation have been included with the intention of presenting a true and accurate reflection of your holiday destination. However, due to circumstances beyond our control, it is foreseeable that some destinations will change in appearance throughout the year and so may appear to have varied at the time of your stay. eg. due to adverse weather.

## 15. SURVEILLANCE AND SECURITY:

Please note that in some properties surveillance cameras and security equipment may be installed inside and/or outside the property, which may have the capability to remotely monitor or record images and/or sound.

## 16. ACTIVITIES:

Some activities may be pre-booked by A&K however, should you wish to participate in other or additional activities, we strongly advise that you

book in advance so as to avoid disappointment.

Some activities, most notably those which are boating and water related, are subject to weather and water levels. A&K cannot be held responsible should such activities be amended and/or cancelled as a result of such matters, over which A&K have no control.

## 17. REGISTRATION:

A non-refundable deposit is required at the time of booking. The deposit amount will be specified at the time of booking.

The remainder of the tour cost is payable on the date shown on your quotation, normally 60 days prior to departure. If the reservation is made after this date, the entire tour price must be paid at the time of confirmation.

## 18. PAYMENT METHOD:

Payments may be made by the following methods:

- Credit card
- Bank transfer

A&K cannot guarantee that all payment methods will be accepted and A&K will therefore advise of the most suitable payment method at the time of deposit.

18.1 Travellers are liable for all bank and related transaction charges including, without limitation, wire fees.

## 19. CANCELLATION:

All cancellations must be received in writing by your A&K Tour Consultant who is A&K's representative arranging the tour.

19.1 Unless otherwise specified in your quotation, the following cancellation terms will apply to your booking:

19.1.1 Cancellations received by A&K between the date of booking and 61 days prior to the date identified in the quotation as day 1 of the traveller's Tour will result in the loss of the deposit.

19.1.2 Cancellations received by A&K 60 - 46 days prior to the date identified in the quotation as day 1 of the traveller's tour will be subject to a cancellation charge of 15% of the tour price.

19.1.3 Cancellations received by A&K 45 - 29 days prior to the date identified in the quotation as day 1 of the traveller's tour will be subject to a

cancellation charge of 25% of the tour price.

19.1.4 Cancellations received by A&K 28 - 15 days prior to the date identified in the quotation as day 1 of the traveller's tour will be subject to a cancellation charge of 50% of the tour price.

19.1.5 Cancellations received by A&K 14 days or less prior to the date identified in the quotation as day 1 of the traveller's tour will be subject to a forfeiture of the entire tour price.

19.1.6 You agree the sums referenced in clauses 19.1.1 through 19.1.5 above are not a penalty and represent a reasonable effort on behalf of A&K to establish its loss prospectively and represent liquidated damages.

19.2 Cancellation of airline tickets will be subject to the refund policy of each individual airline and may be greater than the percentages above particularly when low cost/net based fares are used.

19.3 The purchase of special event tickets is subject to the refund policy of each individual event. Please refer to the specific event policy for details.

19.4 A&K reserves the right to charge for all financial fees, amounts and losses incurred by A&K in excess of your cancellation fee as a result of cancellation.

## 20. CANCELLATION BY A&K:

A&K reserves the right in any circumstances to cancel your trip for any reason. If you fail to pay the balance of the trip price at least 60 days before departure, without notice to you or opportunity to cure, A&K will treat your booking as cancelled and levy the cancellation charges set out in clause 19. If A&K is obliged to cancel your holiday in any other circumstances before departure, A&K will use commercially reasonable efforts to offer alternative arrangements of equivalent or very closely similar standard and price.

## 21. FORCE MAJEURE:

21.1 Force majeure means unusual and unforeseeable circumstances beyond A&K's control or the control of our suppliers, the consequence of which neither A&K, nor its suppliers, could avoid even with all due care, including, but not limited to, war, threat of war, riot, civil strife, terrorist activity (actual or threatened), industrial dispute, technical problems with transport, machinery or equipment, outages or power failures, natural or nuclear disaster, fire, flood, drought,

adverse weather conditions, epidemics or outbreaks of illness and level of water in rivers.

21.2 In the event of a cancellation or material alteration to the trip as a result of the circumstances as described in this clause A&K may in its sole and absolute discretion:

- a) offer the traveller(s) alternative travel arrangements or products of comparable standard as may be appropriate in the circumstances; or
- b) if alternative travel arrangements or products are not offered by A&K, A&K will make a prompt proportional refund of monies paid by the traveller (less any sums A&K is not able to recover from the supplier).

21.3 A&K may charge a reasonable fee to cover the administration costs associated with providing alternative travel arrangements or products.

## **22. CLAIMS AND REFUNDS:**

A&K will not accept any liability for any claims and will not provide refunds except as may be specifically allowed herein.

## **23. LIMITS ON ABERCROMBIE & KENT'S RESPONSIBILITY:**

Neither A&K nor its parent company, affiliates or subsidiaries, nor any of their respective employees, shareholders, officers, directors, successors, representatives, agents and assigns (collectively the "A&K" Parties), owns or operates any entity which is to or does provide goods or services for your trip with the exception of a limited number of vehicles. A&K purchases transportation (by aircraft, coach, train, vessel or otherwise), hotel and other lodging accommodations, restaurant, ground handling and other services from various independent suppliers (including from time to time other affiliated companies). All such persons and entities are independent contractors. As a result, the A&K Parties are not liable for any negligent or wilful act of any such person or entity or of any third person.

In addition and without limitation, the A&K Parties are not responsible for any injury, financial or physical loss, death, inconvenience, delay or damage to personal property in connection to the provision of any goods or services whether resulting from but not limited to acts of God or

force majeure, illness, disease, acts of war, civil unrest, insurrection or revolt, animals, strikes or other labour activities, criminal or terrorist activities of any kind, overbooking or downgrading of services, food poisoning, mechanical or other failure of aircraft or other means of transportation or for failure of any transport mechanism to arrive or depart on time.

There are many inherent risks in adventure travel of the type involved here, which can lead to illness, injury or even death. These risks are increased by the fact that these trips take place in remote locations, far from medical facilities.

If you decide to participate in any activities including, but not limited to, any excursions involving animals, riding on animals, SCUBA diving, snorkelling, boating, hot air ballooning, zip-lining, high altitude treks, climbing, quad biking, para sailing, parachuting, kayaking, white-water rafting, primate tracking and any other activity which A&K considers to carry inherent risks of illness, injury or death ("Activities") then you fully understand and acknowledge that Activities carry with them various inherent risks, including illness, injury or death and you take complete responsibility for your own health and safety and agree to assume all risks of injury, illness or death, whether foreseen or unforeseen that may befall you as a result of participating in any Activities and agree to release the A&K Parties from any liability whatsoever related thereto, to the fullest extent permitted by law.

Further, as consideration for being permitted to participate in the Activities, you release the A&K Parties, whether known or unknown, from, and agree not to sue or make claim against the A&K Parties for property damage, cancellation of any activities for any reason, illness, negligent rescue operations or procedures, personal injury or death arising from your participation in the Activities, and any activity related thereto, including transportation to and from the site of the Activities, regardless of whether such property damage, illness, personal injury, or death results from the negligence of the A&K Parties and/or from any defect in equipment. You further agree to indemnify, defend and hold the A&K Parties harmless with respect to any claim made against the A&K Parties by anyone else which a) related to your participation in any trip or any Activities, or b) would be subject to the above release and covenant not to sue if you had made this claim directly yourself. Upon receipt of notice of the assertion of a

claim, the A&K Parties reserve the right to approve, or withdraw approval of, counsel, in its sole discretion.

## **24. HEALTH PRECAUTIONS:**

Please ensure that you consult your personal physician about anti malaria precautions and other inoculations and vaccinations before travel. Where applicable, please ensure that whilst travelling you carry a valid Yellow Fever certificate.

## **25. TRAVEL ADVISORIES/WARNINGS:**

It is the responsibility of travellers to become informed about the most current travel advisories and warnings by referring to their respective government agencies. In the event of an active State Department or government agency Travel Warning against travel to specific destination location(s) of the trip, should the traveller still choose to travel, notwithstanding any travel advisory or warning, the traveller assumes all risk of personal injury, death or property damage that may arise out of the events like those advised or warned against.

## **26. TRAVELLERS' REPRESENTATIONS:**

If you or any member of your party has any medical problem or disability which may affect your stay, please provide us with full details before we confirm your booking so that we can try to advise you as to the suitability of your chosen arrangements. If we at any time determine, in our sole discretion, that we are unable to properly accommodate the needs of the person(s) concerned, we will not confirm your booking or if you did not give us full details at the time of booking, we will cancel your booking and impose applicable cancellation charges when we become aware of these details.

## **27. AIR TRANSPORTATION:**

**AIR TRANSPORTATION:** Airlines concerned are not to be held responsible for any act, omission or event occurring while passengers are not on board their aircraft. International air carriers are also subject to international air conventions limiting their liability. These limitations of liability are explained on the e-ticket or on the reverse of the airline ticket and when issued, this constitutes the sole contract between the respective air carrier(s) and their passengers.

Airlines overbook all flights! We therefore recommend that you check in

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online as soon as online check-in is made available by the airline. If you do not book in online, or for any reason are unable to do so, we recommend that you are at the airport to check in **3 hours** prior to departure as airlines may re-allocate seats in the event of late check-in and arrivals. A&K is unable to check you in and it is your responsibility to ensure you are checked in within the appropriate time. A&K is neither responsible nor liable if you are downgraded an airline class as a result of the airline overbooking the class in which you are booked. Seat reservations are at the discretion of the airline and may be changed at any time without notice.

**CRUISES/CHARTERS:** If you are scheduled to partake in a cruise or charter it is your responsibility to ensure that you are aboard the vessel no later than 60 minutes before the scheduled sailing time. A&K is neither responsible nor liable if you fail to board the vessel in good time and suffer any loss as a result. Furthermore, refunds will not be given for any days which are missed as a result of such failure, or for clients who choose to leave the Cruise prematurely for any reason.

## 28. PASSPORT & VISAS:

Please note that passport holders are responsible for obtaining the required documentation applicable for entry. Please note also that passports must be valid for at least six (6) months after completion of your journey and should also have sufficient blank pages for visas and immigrations stamps. A&K cannot be held responsible should you be denied entry to a country due to non-compliance with these requirements. Should you require specific information ahead of travel, please consult the travel advice produced by the government of your home jurisdiction, as well as that of the government who issued the passport and/or visa you intend to travel under.

## 29. TRAVELLING WITH CHILDREN:

We recommend that if you are travelling with a child that does not share your surname, in order to minimize the possibility of disruption to your travel plans, you travel with documentation that proves your relationship to the child as well as documentation that proves you have permission to travel with them. A&K cannot be held responsible should you or any member of your travelling party be denied entry to a country due to non-compliance with these requirements. Should you require further specific information ahead of travel, please consult the travel advice

produced by the government of your home jurisdiction, as well as that of the government who issued the passport and/or visa you intend to travel under.

Due to the nature of some of the excursions and activities involved in A&K trips, minimum age requirements are in place at some destinations. Additionally, some accommodations require that children below a certain age share a room with an adult. Such circumstances vary and will be specified within your itinerary, ahead of travel, and at the time of booking.

## 30. TRAVEL INSURANCE:

A&K strongly recommend all clients take out comprehensive travel insurance prior to date of travel. This insurance should cover cancellation and curtailment, all medical expenses including evacuation/repatriation, personal baggage, personal liability, death and permanent disability and travel document insurance.

## 31. ARBITRATION AGREEMENT:

Any claim arising out of or relating to these Terms and Conditions, to the Limits on A&K's Responsibility clause, to the brochure, or to any information relating in any way to the trip, to the trip itself or to any products or services related to the trip, shall be settled in the first instance by binding arbitration before one (1) arbitrator in the applicable legal forum as detailed in clause 32 of these Terms and Conditions. In lieu of a personal appearance at arbitration, the arbitration may be conducted by telephonic means. Arbitration is the exclusive forum in the first instance for dispute resolution and except as otherwise provided by statute, each party shall bear its own costs and expenses and an equal share of the arbitrator and administrative fees; however, the prevailing party shall be entitled to full recovery of all such costs and fees. Disputes shall be arbitrated on an individual basis, with there being no right or authority for any disputes to be arbitrated on a class action basis or in a purported representative capacity on behalf of the general public, other travel suppliers or other entities similarly situated.

## 32. APPLICABLE LAW AND FORUM:

This agreement shall be construed, interpreted and enforced in accordance with, and shall be governed by the laws of the State of Colorado, and exclusive venue for any action shall be in Denver, Colorado. It is agreed between A&K and the travellers that all lawsuits against A&K arising under, in connection with, or

incidental to the tour shall be filed, if at all, in the courts of the State of Colorado to the exclusion of the courts of or in any other country or jurisdiction.

**33. See the A&K USA – US Privacy Notice** which can be found at <https://www.abercrombiekent.com/legal/privacy-notice>, which is incorporated herein.