

# TERMS AND CONDITIONS

These Terms and Conditions (**Terms**) apply to your entry into the Event facilitated by Total Sport Limited (**Total Sport** or **we, us, our**) and you agree to be bound by them. No verbal agreement between you as the **Participant** and Total Sport or any employee, servant or agent of Total Sport will be binding on Total Sport.

## 1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Agreement, unless the context otherwise requires:

**Agreement** means these Terms and includes any other terms set on Total Sport's website.

**Credit** means event credit (equal to the value of the Entry Fee) to be applied towards the cost of any event organised by Total Sport in the next 12 months, up to and including the same Event next year.

**Event** means the outdoor sporting event organised by Total Sport in which you have purchased the right to participate.

**Force Majeure Event** refers to any event caused by circumstances beyond the reasonable control of Total Sport and includes, but is not limited to, acts of God, legislative, regulatory or judicial requirements, war, riot, strikes, labour disputes, fire, flood, pandemic, epidemic, failure of equipment, earthquake or other natural disaster.

**Entry Fee** means the amount payable by Participant to Total Sport in respect of entry into, and participation in the Event as set out on Total Sport's website at <https://www.totalsport.co.nz/> or at each Event's respective website, when registering for an Event.

1.2 **General interpretation:** In this Agreement, unless the context requires otherwise:

- (a) **Including:** means including, without limitation to the generality or specificity of the surrounding words; and
- (b) **Plural:** any words referred to in this Agreement in the singular, where the context permits, shall be deemed to include the plural and vice versa.
- (c) **Statutes and regulations:** reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.

1.3 **Construction:** This Agreement may not be construed adversely to a party just because that party prepared, or procured the preparation of, this Agreement.

## 2. EVENTS AND SERVICES

2.1 **Total Sports Services:** Total Sport will, subject to the terms of this Agreement, provide you access to participate in the Event (**Services**).

2.2 **Participant duties:** The Participant:

- (a) acknowledges that they:
  - (i) are physically fit and healthy,
  - (ii) have trained for the Event; and
  - (iii) has reviewed the course description(s) of the Event,
- (b) acknowledges that there is risk of serious injury, illness, and in extreme cases, loss of life, from various causes including but not limited to dehydration, hypothermia, hyperthermia, accidents with other participants, or heart attack, and (to the greatest extent permitted by law) Participant accepts all risks involved (also including by way of example only, Participant's own abilities or equipment, road or track surfaces, weather, pedestrians, spectators) and agrees to participate in the Event at their own risk;
- (c) releases Total Sport (including their officers, sponsors, agents, contractors, volunteers and employees) to the maximum extent permitted by law from all liability for any loss (direct or indirect loss), injury or death (including liability for negligence and/or recklessness) arising out of or in connection with Participant's intended or actual participation in an Event;

- (d) acknowledges that Total Sport's safety briefings, event officials, signs, and directions are part of the services, but are not, and will not be, a guarantee of safety;
- (e) will, or has, read the Event safety rules and will attend any Event safety briefing in relation to the Event;
- (f) will comply with all rules and directions of Event officials and their personnel (including contractors, employees, and volunteers) and acknowledges that this compliance is important to ensure the safety of all participants of the Event;
- (g) agrees to disclose to, and will notify Total Sport of, any personal medical conditions which may affect themselves, staff, or other participants at a Total Sport event, consents to receiving any necessary medical treatment from the Event medical staff, and agrees to disclose relevant medical information when being treated by a Total Sport staff member or Event medic during an Event;
- (h) acknowledges that Total Sport will not be responsible for the security of any personal belongings at the Event;
- (i) confirms they are 18 years of age or over, and where the Participant is below the age of 18, the Participant agrees to have this Agreement viewed, signed, or otherwise agreed by their guardian, and guardians of children confirm the Participant is fit to enter and complete the Event (and otherwise confirms and acknowledges on behalf of the child where required under this Agreement);
- (j) acknowledges where the Participant is registering into an Event on behalf of others, then Participant confirms they do so with the permission of those other person(s), and they will be bound by this Agreement as if they had signed it themselves;
- (k) agrees that the right to participate in an Event is not transferable (to other people, or to another Event) and is non-refundable unless clause 3 applies.

## 3. EVENT POSTPONEMENT AND REFUND POLICY

3.1 Participant acknowledges that Total Sport reserves the right to:

- (a) change the format of this event (and/or route of the Event) where it may become necessary or desirable to do so due to circumstances beyond the control of Total Sport, and if that occurs, Participant consents to the changes and agrees that each and every one of the Event rules, terms and conditions will apply to that changed Event; and
- (b) postpone or cancel the Event whether due to poor weather, natural disaster, pandemic outbreak, any Force Majeure Event, or for any other reason beyond Total Sport's control. If the Event is cancelled (or postponed and Participant cannot make the postponement date), Participant acknowledges and accepts that Participant's entry fee is non-refundable, however, Credit will be given in accordance with clause 3.4.

3.2 Total Sport will make reasonable endeavours to postpone the Event rather than cancel.

3.3 If Total Sport cannot postpone the Event (or if the Event has been postponed once before already and the postponed Event cannot go ahead) the Event will be cancelled and a Credit will be issued.

3.4 Where the Event is cancelled in accordance with clause 3.1(b) Participant acknowledges that the amount of Credit given will depend on the amount of lead time between the circumstances rendering the Event cancelled (i.e. government lockdown announcement or weather event) and the Event date and:

- (a) where there is more than 2 weeks' notice, 100% Credit will be given; and
- (b) where there is 2 weeks' notice or less, 50% Credit will be given.

- 3.5 If Participant is sick or injured and cannot participate in the Event, they may transfer the value of the Entry Fee to any Total Sport event within the following 12 months, minus a \$20 administration fee which Participant acknowledges there is a reasonable amount for the administrative dealings involved with changing Participant's Event entry. Participant must inform Total Sport no later than 48 hours before the Event in order to be eligible for this Credit.

#### 4. PRIVACY

- 4.1 You agree that Total Sport may collect, retain and use information about you (collected directly from you, and from others where you have authorised, such as Register Now in accordance with clause 4.3) for the purposes of providing Services to you. If you choose not to provide us with personal information, we may not be able to carry out our Services to you.
- 4.2 You authorise Total Sport to disclose any information obtained for the purposes set out in clause 4.1, to those parties required by us to carry out the Services to you, including sharing it with our service providers, associated companies and contractors. In general, the third party providers we will use will only use your information to the extent necessary to allow them to perform the services to us.
- 4.3 Beside our staff, Total Sport may collect your personal information from, and share personal information with, Register Now Pty Ltd and Registration Logic Pty Ltd (**Register Now**) in connection with event registration and payment processes. Register Now's privacy policy may be found at <https://registernow.io/privacy> and their terms and conditions of payment may be found at <https://registernow.io/terms-and-conditions>
- 4.4 You may ask to see any information held by Total Sport as long as it is readily retrievable and you may ask for any details that are wrong to be corrected by contacting us at [registrations@totalsport.co.nz](mailto:registrations@totalsport.co.nz).
- 4.5 Total Sports is required to ensure personal information is protected (by security safeguards as are reasonable) against loss, misuse or unauthorised disclosure, and Total Sport will not keep personal information for longer than necessary for the purpose of which it was collected.
- 4.6 Participant consents to the use of aerial drone(s) above or around them by Total Sport (or any companies contracted by Total Sport for the purposes of aerial photography and filming), at the Event for filming and promotional purposes in connection with the Event.
- 4.7 Participant also acknowledges that where health information is provided to Total Sport, the provisions of the Privacy Act 2020 will be amended to the extent necessary in accordance with the Health Information Privacy Code 2020.
- 4.8 Notwithstanding the above clauses 4.1 to 4.5, Participant acknowledges that Total Sport may use Participant's name, likeness, and images in the media for marketing and promotional purposes of Total Sport's Services before, during, or after the Event(s).
- 4.9 Participant understands and acknowledges that Participant's details will be added to the Total Sport event database and will be contacted in regard to upcoming events and promotions. Participant acknowledges that they may opt out at any time by unsubscribing or otherwise contacting Total Sport.

#### 5. LIABILITY

- 5.1 **Total liability:** To the maximum extent permitted by law, the liability of Total Sport arising from any:
- breach of any of Total Sport's obligations under or in connection with this Agreement;
  - negligence, misrepresentation or other act or omission on the part of Total Sport, its employees, agents or contractors; or
  - other cause whatsoever,

will not exceed the Entry Fee paid by Participant to Total Sport under this Agreement.

- 5.2 **Exclusions:** To the maximum extent permitted by law and notwithstanding any other provision of this Agreement, under no circumstances will the measure of damages against Total Sport for any breach of this Agreement, equity, tort (including negligence), or other action or contravention of any statute, include special, incidental, consequential or indirect loss or any consequential economic damage, loss of or damage to data, lost profits, business, revenue, goodwill, or anticipated savings, nor will Total Sport be liable for:

- any breach to the extent that such breach is attributable to the prior default, negligence, misconduct or breach by Participant;
- damage or loss resulting from:
  - the intended or actual participation in the Event by Participant or any other person;
  - a Force Majeure Event;
- personal injury, harm or death caused or contributed to by:
  - the intended or actual participation in the Event by Participant or any other person; or
  - contravention of any laws by Participant or any other person,

whether or not Participant was aware, or should have been aware, of the possibility of such loss or damage, personal injury, harm or death.

#### 6. GENERAL

- 6.1 **Force Majeure:** Notwithstanding any other provision of this Agreement, non-performance by Total Sport of any of its obligations under this Agreement will be excused, without liability for non-performance, during the time and to the extent that performance is prevented, wholly or substantially, by a Force Majeure Event affecting Total Sport to such an extent that Total Sport is unable to perform its relevant obligations. Total Sport will promptly advise Participant, of its inability to perform any of its obligations and the likely duration of such non-performance.
- 6.2 **Assignment:** Total Sport may subcontract, assign or transfer all or any part of Total Sport's rights or obligations under this Agreement. Participant must not subcontract, assign or transfer any of their rights or obligations under this Agreement to any other person without Total Sport's consent. If Participant is unable to attend the Event, Participant is not to transfer Participant's entry into the Event to anyone else unless Participant has obtained Total Sport's prior written approval.
- 6.3 **Entire agreement:** To the maximum extent permitted by law, this Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all prior agreements, or representations between the parties relating to such matters.
- 6.4 **Amendment:** No amendment to this Agreement will be effective unless it is in writing and signed by both parties.
- 6.5 **Severance:** To the extent permitted by law, any unlawful or voidable provision in this Agreement will be read down so as to be valid and enforceable or, if it cannot be read down, will be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions, provided that the reading down or severing does not materially affect the purpose of or frustrate this Agreement.
- 6.6 **Governing law:** This Agreement is governed by and will be construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand.