

Karting Australia Risk Warning, Disclaimer and Indemnity

V2022



Karting Activities are inherently dangerous recreational activities and there is significant risk of injury, disability or death.

If you do not wish to be exposed to such risks, then you should not participate in the Karting Activities.

Acknowledgement of Risks

You acknowledge that the risks associated with attending or participating in Karting Activities include but are **not limited** to the risk that you may suffer harm as a result of:

- Karts (or parts of them) colliding with other Karts or persons or property;
- other participants acting dangerously or with lack of skills;
- high levels of noise exposure;
- acts of violence and other harmful acts (whether intentional or inadvertent) committed by persons attending or participating in the event; and
- the failure or unsuitability of facilities (including grand-stands, fences and guard rails) to ensure your safety.

Exclusion of Liability, Release and Indemnity

In exchange for being able to attend or participate in the Karting Activities, **you will and agree to:**

- **release** Karting Australia and the Entities to the extent that any or all of them are providing Recreational Services from all liability for:
 - your **death**;
 - any **physical or mental injury** (including the aggravation, acceleration or recurrence of such an injury);
 - the contraction, aggravation or acceleration of a **disease** including but not only COVID-19;
 - 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:**
 - that is or may be harmful or disadvantageous to you or the community; or
 - that may result in harm or disadvantage to you or the community,
- any claim for any costs and expenses you may incur as a consequence of any of the above; arising from your participation in or attendance at the Karting Activities;
- **indemnify and hold harmless and keep indemnified** Karting Australia and the Entities to the maximum extent permitted by law in respect of any Claim by any person; and
- attend at or participate in the Karting Activities at your own risk.

You understand that:

- nothing in this document excludes, restricts or modifies any rights that you may have as a result of significant personal injury that is caused by the Reckless Conduct of Karting Australia and the Entities as the supplier of the Karting Activities and Recreational Services;
- nothing in this document prevents Karting Australia and the Entities from relying on any laws (including statute and common law) that limit or preclude their liability;
- nothing in this document excludes any term or guarantee which under statute cannot be excluded, however the liability of Karting Australia and the Entities is limited to the minimum liability allowable by law;
- nothing in this document precludes you from making a claim under a Karting Australia insurance policy where you are expressly entitled to make a claim under that insurance policy; and
- Karting Australia has arranged for limited personal injury insurance coverage which may provide you with some protection for loss, damage or injury that you may suffer during your participation in the Karting Activities. You acknowledge and accept that the insurance taken out by Karting Australia may not provide you with full indemnity for loss, damage or injury that you may suffer during your participation in the Karting Activities, and that you may have to pay the excess if a Claim is made under an insurance policy on your behalf. You agree that your own insurance arrangements are ultimately your responsibility and you will arrange any additional coverage at your expense after taking into account Karting Australia's insurance arrangements, this document and your own circumstances.

Where Karting Activities are held in the following jurisdictions, you acknowledge that you have also read and accept the following warnings:

Under Australian Government Consumer Law (which is part of the **Competition and Consumer Act 2010 (Commonwealth)**), several guarantees are implied into contracts for the supply of certain goods and services. You agree that the application of all or any of the provisions of Subdivision B of Division 1 of Part 3-2 of Australian Consumer Law (i.e. guarantees relating to the supply of services), the exercise of rights conferred by those provisions, and any liability of Karting Australia and the Entities for a failure to comply with any such guarantees, are excluded. However, such exclusion is limited to liability for:

- death, physical or mental injury (including aggravation, acceleration or recurrence of such an injury of the individual);
- contraction, aggravation or acceleration of a disease of an individual; or
- 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 that is or may be harmful or disadvantageous to the individual or the community, or that may result in harm or disadvantage to the individual or the community.

This exclusion does not apply to significant personal injury suffered by you as a result of the reckless conduct of Karting Australia and the Entities.

Warning Applicable in Relation to Karting Activities Held in Victoria

WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012

If you sign this form, you will be agreeing that your rights to sue the supplier under the Australian Consumer Law and Fair Trading Act 2012 are excluded, restricted or modified in the way set out in this form, if you are killed or injured because the services provided were not in accordance with the statutory guarantees outlined below.

Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that the recreational services it supplies to you-

- are rendered with due care and skill; and
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- might reasonably be expected to achieve any result you have made known to the supplier.

Under section 22 of the **Australian Consumer Law and Fair Trading Act 2012**, the exclusion of these statutory guarantees is brought to your attention by this form.

NOTE: The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. **Gross negligence**, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the Australian Consumer Law and Fair Trading Regulations 2012 and section 22(3)(b) of the **Australian Consumer Law and Fair Trading Act 2012**.

Warning Applicable in Relation to Karting Activities Held in South Australia

Under sections 60 and 61 of **The Australian Consumer Law (SA)**, if a person in trade or commerce supplies you with services (including recreational services), there is a statutory guarantee that those services:

- will be rendered with due care and skill; and
- any product resulting from those services, will be reasonably fit for the purpose for which the services are being acquired (as long as that purpose is made known to the supplier); and
- any product resulting from those services, will be of such a nature, and quality, state or condition, that they might reasonably be expected to achieve the result that the consumer wishes to achieve, (as long as that wish is made known to the supplier or a person with whom negotiations have been conducted in relation to the acquisition of the services).

Excluding, Restricting or Modifying Your Rights:

Under section 42 of the **Fair Trading Act 1987 (SA)**, the supplier of recreational services is entitled to ask you to agree to exclude, restrict or modify their liability for any personal injury suffered by you or another person for whom, or on whose behalf, you are acquiring the services (a third party consumer). If you sign this form, you are agreeing to exclude, restrict or modify the supplier's liability with the result that compensation may not be payable if you or the third party consumer suffer personal injury.

Karting Australia is the FIA and Motorsport Australia's delegate for the regulation and control of Karting in Australia.



Important:

You do not have to agree to exclude, restrict or modify your rights. However if you participate in, attend or spectate at the Karting Activities you have agreed to said exclusion, restriction or modification of your rights. Note that you may have further legal rights against the supplier under other laws. A child under the age of 18 cannot legally agree to exclude, restrict or modify their rights. A parent or guardian of a child who acquires recreational services for the child cannot legally agree to exclude, restrict or modify the child's rights.

Agreement to exclude, restrict or modify your rights:

You agree that the liability of Karting Australia and the Entities for any death or personal injury that may result from the supply of the recreational services that may be suffered by you (or a person for whom or on whose behalf you are acquiring the services) is excluded. Further information about these rights can be found at www.cbs.sa.gov.au

Definitions:

- a. "Claim" means and includes any action, suit, proceeding, claim, demand or cause of action however arising including but not limited to negligence, BUT does NOT include a claim under a Karting Australia insurance policy by any person expressly entitled to make a claim under that insurance policy;
- b. "Entities" means event and competition organisers/promoters/managers, land and track owners/managers/administrators/lessees, Karting Australia Member States and affiliated clubs, state and territory governments and insureds listed in Karting Australia's public/product/professional indemnity insurance policies and each of their related bodies corporate (including their related bodies corporate) and each of their organs and agencies, officers/president/directors/executives, employees, servants, agents, partners, providers, members, competitors, drivers, co-drivers, navigators, officials, crew members, service crew, delegates, licence holders, representatives, commissions, committees, advisers, trustees, councils, panels, shareholders, volunteers, officials, appointees, delegated bodies and sponsors;
- c. "Karting Activities" means any Karting activities, Competitions or Recreational Services which are permitted or approved which Karting Australia regulates or administers or otherwise are under the responsibility / control of Karting Australia;
- d. "Karting Australia" means the Australian Karting Association Ltd. trading as Karting Australia;
- e. "Reckless Conduct" means conduct where the supplier of the recreational services is aware, or should reasonably have been aware, of a significant risk that the conduct could result in personal injury to another person and engages in the conduct despite the risk and without adequate justification;
- f. "Recreational Services" means (unless otherwise defined in this document) services that consist of participation in:
 - a. a sporting activity; or
 - b. a similar leisure time pursuit or any other activity that:
 - i. involves a significant degree of physical exertion or physical risk; and
 - ii. is undertaken for the purposes of recreation, enjoyment or leisure.

SIGNING

I accept the conditions of this Agreement and acknowledge the risks arising from me entering and remaining at a Karting Venue.

Name: Licence No: (If applicable)

Signature: Date:

Medical Disclosure

.....
.....
.....
.....

(Fully set out any medical condition which may affect the applicant's physical or mental ability, capacity or judgement.)

For persons under the age of 18 years the following parent/guardian consent must be completed.

PARENT/GUARDIAN CONSENT – PERSONS UNDER 18 YEARS OLD

I, of (Address) am the parent/guardian** of the above-named ("the minor") who is under 18 years old. I have read this Risk Warning, Disclaimer and Indemnity Form and understand its contents, including the Acknowledgement of Risks, Exclusion of Liability, Release and Indemnity and have explained the contents to the minor.

I consent to the minor entering a Karting Venue and participating in recreational activities conducted at the Venue at his/her own risk.

Signed..... Date

Parent/Guardian**

** Delete whichever does not apply