

## **GENERAL TERMS AND CONDITIONS OF HOTEL BOOKER B.V.**

(FOR THE PROVISION OF SERVICES TO HOTELS)

### **1. DEFINITIONS / INTERPRETATION**

1.1 Unless expressly indicated otherwise, the following terms will have the stated meaning in these general terms and conditions:

<b>General Terms and Conditions</b>	these general terms and conditions of Hotel Booker for the provision of services, as may be amended by Hotel Booker from time to time.
<b>Arrival Summary</b>	a summary of Guests that actually show up at the Hotel following their Reservations, in the month prior to the provision of the summary
<b>Availability Parity</b>	the offer of equal or better availability of rooms and/or packages via Hotel Booker than is available via the Participant's own website or own reservation channel.
<b>Channel Management System</b>	any automatic system that the Participant uses, via Third Parties or otherwise, to manage prices, availability and other conditions on Hotel Booker's systems via a direct (XML) connection.
<b>Participant</b>	any natural person or legal entity with whom/which Hotel Booker has concluded or wishes to conclude an Agreement with regard to the use of the Services by the Participant.
<b>Third Party</b>	any natural person or legal entity that Hotel Booker uses in the performance of the Agreement
<b>Services</b>	the services to be performed by Hotel Booker, which consist of acting as an intermediary in the conclusion of agreements between the Participant and Guests via the Websites and/or a call centre operated by Hotel Booker
<b>Guest</b>	any natural person or legal entity that is given the opportunity by Hotel Booker to reserve or book overnight stays and/or packages via the Websites or a call centre operated by Hotel Booker
<b>Hotel</b>	the hotel of the Participant for which the Participant purchases the Services
<b>Hotel Booker</b>	the private limited company Hotel Booker B.V., with registered office in Haarlem and principal place of business at Stationsplein 90-92, 2011 LM Haarlem, entered in the Commercial Register of the Haarlem Chamber of Commerce under number 34180570
<b>Information</b>	all information to be provided by the Participant to Hotel Booker with regard to the Hotel for inclusion on the Websites, such as prices, packages, availability and other details
<b>Offer</b>	a quotation, proposal or offer from Hotel Booker for the provision of Services
<b>Recipient</b>	the Party that receives Confidential Information from the Provider
<b>Agreement</b>	the oral or written cooperation agreement concluded between

	Hotel Booker and the Participant with regard to the purchase of Services by the Participant
<b>Commission</b>	the commission or payment that the Participant owes Hotel Booker for each Reservation <b>Parity</b>
Price Parity and Availability Parity <b>Party/Parties</b>	Hotel Booker and/or the Participant
<b>Pay-by-Click Campaigns</b>	online marketing campaigns whereby Hotel Booker pays Third Parties a fee when a user or visitor of that Third Party's website clicks on an advertisement and is transferred to a Website
<b>Personnel</b>	all individuals employed by Hotel Booker who are used by Hotel Booker for the performance of the Agreement
<b>Post-Paid Reservations</b>	Reservations via the Websites whereby Guests pay the full price for the Reservation in the Hotel to the Participant
<b>Prepaid Reservations</b>	Reservations via the Websites whereby Guests pay the full price for the Reservation at the time of reserving to Hotel Booker
<b>Price Parity</b>	the offer of equal or better prices for the same Hotel, room type and/or package, arrival dates, number of guests, type of board (bed only, bed and breakfast, half board, full board), reservation and cancellation policy and further restrictions via Hotel Booking than is available via the Participant's own website or own reservation channel
<b>Reservations</b>	reservations for the Hotel made by Guests via a Website, a call centre of Hotel Booker or otherwise via Hotel Booker acting as an intermediary
<b>Reservation Summary</b>	a summary of the Reservations for the month prior to the provision of the summary
<b>Reservation Amount</b>	the total costs of a Reservation (including VAT)
<b>Provider</b>	the Party that provides or on whose behalf Confidential Information is provided to the Recipient
<b>Confidential Information</b>	all details of the Guests, results achieved, marketing plans and all financial, technical and business strategic information that is not public and is labelled by the provider thereof as confidential or which the recipient can reasonably assume may be labelled as confidential.
<b>Website</b>	any website that Hotel Booker uses in the provision of the Services, including but not limited to <a href="http://www.hotelspecials.nl">www.hotelspecials.nl</a> , <a href="http://www.hotelspecials.de">www.hotelspecials.de</a> , <a href="http://www.hotelspecials.be">www.hotelspecials.be</a> and <a href="http://www.hotelaanbiedingen.nl">www.hotelaanbiedingen.nl</a> ; also referred to jointly as the ' <b>Websites</b> '. A current overview of the websites operated by Hotel Booker is available via <a href="http://www.bookerzzz.com/labels-countries/">http://www.bookerzzz.com/labels-countries/</a>

1.2 Unless the context calls for a different meaning or the contrary is expressly evident, the following rules

apply to the interpretation of the General Terms and Conditions:

1.2.1 the use of the singular also includes the plural, and vice versa;

1.2.2 any reference to a certain gender, includes the masculine, feminine and neutral genders;

1.2.3 any reference to natural persons also includes reference to an individual, legal entity (with or without legal personality), association/society, partnership, government, government body, authorities,

collaboration/joint venture, Works Council or any other form of employee representation in any jurisdiction, without or without independent legal personality;

1.2.4 any reference to a person also includes a reference to lawful representatives, successors, authorised assignees and agents in any jurisdiction, with or without independent legal personality;

1.2.5 any reference to a statutory provision also refers to (i) the statutory provision after it is amended or enters into force again (or both) before the date of the Agreement; and (ii) any subordinate regulations on the basis of the statutory provision (before the date of the Agreement);

1.2.6 the use of 'including' or 'which also includes' means 'including but not limited to / without any restriction on the general applicability of the above'; and

1.2.7 the use of 'or' (without 'and') also includes 'and/or'.

## **2. APPLICABILITY OF THESE TERMS AND CONDITIONS**

2.1 These General Terms and Conditions apply to all Offers, activities, order confirmations, Agreements and invoices relating to the Services between the Participant and Hotel Bookers, or their legal successors.

2.2 The latest filed version or the version that applied at the time of the conclusion of the Agreement will always apply.

2.3 The applicability of any purchasing conditions and/or other terms and conditions of the Participant is expressly excluded.

2.4 If and insofar as one or more provisions of the General Terms and Conditions differ from one or more provisions of the Agreement, the provisions of the Agreement will prevail.

2.5 If any provision of the General Terms and Conditions is invalid or declared void, the other provisions of the General Terms and Conditions will remain fully in force.

2.6 Hotel Bookers may amend the General Terms and Conditions from time to time.

2.7 The General Terms and Conditions also apply to additional and/or new orders of the Participant.

2.8 Amendments and additions to the General Terms and Conditions will only be valid if these are agreed in writing between Hotel Booker and the Participant.

2.9 The amendments and/or additions referred to in the previous paragraph only apply to the order concerned. Amendments and additions must be agreed on again in writing for every new/additional order.

## **3. OFFERS**

3.1 Offers are based on the information provided by the Participant.

3.2 The Offers made by Hotel Bookers are without obligation. As long as Hotel Booker has not received written acceptance of an Offer from the Participant, it will be entitled to withdraw the Offer without stating reasons.

3.3 The provisions of Article 3.2 also apply if the Offer includes a period for acceptance. If no period for acceptance is mentioned, the Offer will expire in any case 30 (thirty) days after the date thereof.

3.4 Prices in Offers exclude VAT and other government levies.

3.5 Offers do not automatically apply to future orders.

## **4. CONCLUSION OF THE AGREEMENT**

4.1 The Agreement is concluded (i) by the acceptance of the Offer by the Participant and after signature of a written confirmation thereof by Hotel Booker, or (ii) if Hotel Booker commences performance of the Agreement, at the request and with the knowledge and approval of the Participant, before a written order confirmation is sent to the Participant.

4.2 If the acceptance differs from the proposal made in the Offer, Hotel Booker will not be bound by the acceptance. The Agreement will then not be partially concluded, or concluded in accordance with this different acceptance, unless Hotel Bookers indicates otherwise.

## **5. PERFORMANCE OF THE AGREEMENT**

5.1 Hotel Booker has a best efforts obligation with regard to the Services to be provided and the performance of the Agreement.

5.2 Hotel Booker will perform the Services under the Agreement to the best of its knowledge, expertise and ability.

5.3 If and insofar as required for the proper performance of the Agreement, Hotel Booker will be entitled – without the Participant's prior consent – to arrange for certain activities to be performed by Third Parties.

## **6. AMENDMENT OF THE AGREEMENT**

6.1 If it becomes evident during the preparation for or performance of the Agreement that it is necessary for its proper performance to change or add to the Services to be performed, the Parties will amend the Agreement accordingly in due time and in consultation.

6.2 If the Parties agree that the Agreement will be amended or supplemented, the agreed deadline for completion of the Agreement may be affected as a result. Hotel Booker must notify the Participant of the altered deadline as soon as possible.

6.3 The amendments and/or additions to the Agreement and any costs and consequences thereof must be confirmed by Hotel Booker to the Participant in writing.

6.4 Notwithstanding Article 6.3, Hotel Booker will not be able to charge any additional costs if the amendment or addition is a result of circumstances that can be attributed to Hotel Booker.

## **7. PARTICIPANT'S OBLIGATION TO PROVIDE INFORMATION**

7.1 The Participant must ensure that all Information, which Hotel Booker indicates is necessary – or which the Participant reasonably ought to realise is necessary – for the performance of the Agreement is furnished to Hotel Booker in due time and complies with the conditions set by Hotel Booker.

7.2 If the Participant provides information carriers, electronic files or software to Hotel Booker, it guarantees that these information carriers, electronic files or software are free from viruses and files.

7.3 All Information provided by the Participant (including images) which is to be included on the Websites,

should only contain details relating to:

7.3.1 the Hotel;

7.3.2 the facilities and services in the Hotel;

7.3.3 the rooms or packages available for the Reservation, including any levies, surcharges and rates;

7.3.4 all applicable terms and restrictions relating to the cancellation and/or no-show policy;

7.3.5 the Information should not in any case include telephone or fax numbers, e-mail addresses or any other reference to the Hotel, the Participant's own website or third-party websites.

7.4 All Information provided by the Participant must be based on the truth and may not be misleading or inaccurate in any case.

7.5 Hotel Booker reserves the right at all times to amend or exclude Information from being placed on the

Websites, without notification to the Participant, if it is inaccurate, incomplete or contrary to the terms and conditions of this Agreement.

7.6 Hotel Booker will draw up a description of the Hotel on the basis of the received Information and place it on the Websites.

7.7 The Participant is obliged to check all Information and the description and presentation of the Hotel drawn up by Hotel Bookers for inaccuracies and completeness and, where necessary, to notify Hotel Bookers of any inaccuracies.

7.8 The responsibility for the Information as it appears on the Websites rests with the Participant at all times, even if the Participant chooses to have it processed by a Channel Management System or by Personnel.

## **8. RESERVATIONS**

8.1 Hotel Booker undertakes to inform the Participant of Reservations as soon as possible, stating the name and the phonenumber of the Guests, arrival dates, length of stay, booked package or room type, number of people and any preferences of the Guests in relation to the room(s).

8.2 The Reservation will be sent automatically to the Participant by e-mail, to its stated e-mail address and/or via a Channel Management System.

8.3 In case of different (manual) Reservations, Hotel Booker will send the Participant an e-mail with the different request.

8.4 Rooms and/or packages to be reserved on request will be sent by Hotel Booker to the Participant by e-mail. The Participant must approve or reject the Reservation Request within 24 hours of its transmission.

8.5 Hotel Booker must confirm the Reservation as soon as possible, but in any event within 24 hours of the Reservation, to the Guests by e-mail and/or post. A direct agreement is concluded between the Participant and the Guest upon the confirmation of the Reservation.

8.6 The Participant must endeavour to comply with Guests' preferences as stated in the Reservation at all times.

8.7 If Guests decide when already at the Hotel to extend their stay and so amend the initial Reservation, the Participant will also owe Commission to Hotel Bookers at the agreed percentage on the amount of the extended stay.

8.8 The Participant must furnish a monthly list of the extended stays to Hotel Booker by means of an adjustment to the Arrival Summary and/or the Reservation Summary.

8.9 The Participant undertakes to notify Hotel Booker of Reservations that it has not received beforehand, which are made by Guests that are unknown to it and that have Reservations made via Hotel Booker when they check in. Hotel Booker must, if possible, check the details of the Reservation immediately after receipt of this notice and, if necessary, send the Reservation to the Participant again.

8.10 If the Participant is of the opinion that it has not received a Reservation, it will not mention this to the Guests before consulting with Hotel Booker.

8.11 For every 100 (one hundred) Reservations, the Participant will make available 1 (one) overnight stay on the basis of a standard twin room, including breakfast, to Hotel Booker for promotional purposes, complaint handling and/or any other purpose that Hotel Booker deems relevant. This overnight stay will be used in consultation between Hotel Booker and the Participant.

## **9. CANCELLATIONS / FULFILMENT OF RESERVATIONS**

9.1 The Participant may apply its own cancellation conditions to Reservations made via the Websites.

9.2 If the Participant wishes to apply its own cancellation conditions, these must be communicated to Hotel Booker. The validity of these cancellation conditions is the responsibility of the Participant at all times.

9.3 If the Participant does not wish to apply its own cancellation conditions or does not supply these conditions to Hotel Booker, the 'Uniform Conditions for the Hotel and Catering Industry' will be declared applicable to the Reservations.

- 9.4 The Participant may not cancel Reservations or request Guests to cancel Reservations under any circumstances.
- 9.5 The Participant guarantees Guests that their Reservations will be fulfilled. If the Participant is unable to comply with this obligation for any reason, it must immediately notify the Guests and Hotel Booker thereof.
- 9.6 If the Participant cannot comply with its obligation to fulfil the Reservation, it undertakes to offer an alternative to the Guests, which must be of the same or better quality, in the Hotel or at an alternative location, and must assume responsibility for any additional costs that may arise.
- 9.7 If the Participant cannot comply with its obligation to fulfil the Reservation as a result of any impediment on its part, it will still owe the full Commission to Hotel Booker.
- 9.8 The Participant remains fully responsible for charging the costs to Guests arising from the Reservation, provided that this is in accordance with the applicable cancellation conditions. Hotel Booker is not a contractual partner of the Guests and therefore cannot be held liable for the costs payable by them.
- 9.9 If it is not possible for Hotel Booker to collect the costs of the Reservation from Guests in case of Prepaid Reservations, it reserves the right to cancel the Reservations unilaterally and at no charge, regardless of the Participant's applicable cancellation conditions. Hotel Booker must inform the Participant hereof as soon as possible.

## **10. PRICES FOR RESERVATIONS**

- 10.1 Prices for Reservations are always stated on the Website inclusive of VAT and all other applicable government taxes, excise duties and/or levies, with the exception of any tourist tax. Tourist tax, if introduced by the local authorities in the Participant's place of business, must be entered separately on the Websites by the Participant.
- 10.2 Hotel Booker guarantees the Guests the lowest price for Reservations.
- 10.3 If Guests submit a claim to Hotel Booker on the basis of the aforementioned guarantee and the Participant has failed in its obligations towards Hotel Booker to comply with Price Parity and/or Availability Parity, Hotel Booker will charge the Participant the costs associated with this claim and the Participant must pay these costs to Hotel Booker.
- 10.4 The Participant may not charge Guests any costs (such as reservation or service fees) other than those arising directly from the Reservation.

## **11. COMMISSION / INVOICING**

- 11.1 The Participant must pay Hotel Booker a Commission for every Reservation. Unless expressly agreed otherwise in the Agreement, the Commission is 15% (fifteen percent) (excluding VAT) on the Reservation Amount.
- 11.2 The Participant is at all times obliged, at Hotel Booker's request, to allow inspection of the financial data that is necessary to enable Hotel Booker to verify the actual Reservation Amount.
- 11.3 Hotel Booker is entitled during the term of the Agreement to alter the agreed Commission if this is necessitated by circumstances that increase cost prices. The Participant will be given 2 (two) months' advance written notice of this alteration. If the Participant does not agree to the alteration, it will be entitled within 2 (two) weeks of receipt of the notice to terminate the Agreement as from the date on which the alteration would have become effective.
- 11.4 Hotel Booker offers the Guests two payment options when making a Reservation, which results in two invoicing options for the Commission, namely invoicing on the basis of Post-Paid Reservations and invoicing on the basis of Prepaid Reservations.
- 11.5 Invoicing process for Post-Paid Reservations:

- 11.5.1 Hotel Booker will send the Participant an Arrival Summary on the first business day of the month concerned;
- 11.5.2 after sending the Arrival Summary, the Participant will have 5 (five) business days in which to check the Arrival Summary for accuracy and completeness of the name of the Guests and length of stay, among other things, and to notify Hotel Booker of any necessary alterations;
- 11.5.3 Hotel Booker will only accept alterations to the Arrival Summary which the Participant communicates to its financial department, by fax or e-mail, in due time;
- 11.5.4 Hotel Booker will send the invoice for the Commission generated in the month concerned to the Participant 5 (five) business days after sending the Arrival Summary;
- 11.5.5 if further alterations prove to be necessary at a later stage, the Participant must notify Hotel Booker's financial department thereof separately. If these alterations will lead to an adjustment of the Commission due for the month concerned, Hotel Booker will draw up a separate settlement invoice and send it to the Participant. The amount of the settlement invoice may in no case be set off against the amount of the invoice for the generated Commission.
- 11.6 Invoicing process for Prepaid Reservations:
  - 11.6.1 Hotel Booker will send a Reservation Summary to the Participant on the first business day of the month of all Prepaid Reservations which, in case of payment at the time of making a reservation, are made in the previous month or, in case of payment upon arrival at the Hotel, are received in the previous month;
  - 11.6.2 after sending the Reservation Summary, the Participant will have 5 (five) business days to check the Reservation Summary for accuracy and completeness and to notify Hotel Bookers of any alterations;
  - 11.6.3 Hotel Booker will only accept alterations to the Reservation Summary which the Participant communicates to its financial department, by fax or e-mail, in due time;
  - 11.6.4 Hotel Booker will send a final settlement statement for the previous month to the Participant within 5 (five) business days of sending the Reservation Summary. The Commission to be received by Hotel Booker will be deducted from the amounts that it has already received from Guests, giving rise to a net settlement invoice;
  - 11.6.5 the Participant will never send Hotel Booker invoices for the amounts that Hotel Booker has received for Prepaid Reservations. The Participant will allow Guests to check out in the normal manner.

## **12. PAYMENT TERMS**

- 12.1 Payment must be made within 14 (fourteen) days of the invoice date, unless Hotel Booker and the Participant have agreed otherwise.
- 12.2 Hotel Booker will pay the amount stated in the net settlement invoice around the fifteenth of each month to the Participant.
- 12.3 Any comments and/or remarks concerning the invoice received from Hotel Booker must be made in writing to Hotel Booker within 5 (five) business days of the invoice date. Making any comments and/or remarks does not suspend the payment obligation.
- 12.4 If the Participant does not pay, or does not fully pay, the amount due on the basis of the invoice within 30 (thirty) days of the invoice date, it will be in default by operation of law and without any further notice of default, and will be liable to pay statutory commercial interest, for which purpose part of a month counts as a full month.
- 12.5 If the Participant is in default of payment, it must reimburse all costs that Hotel Booker incurs to obtain payment, including the extrajudicial and judicial costs. The extrajudicial costs amount to at least 15% (fifteen percent) of the principal sum, subject to a minimum of EUR 500 (five hundred euros).

- 12.6 In case of liquidation, bankruptcy, attachment or a moratorium on the payment of debts of the Participant, Hotel Booker's claims against the Participant will become immediately due and payable in full.
- 12.7 Hotel Booker will deduct payments made by the Participant firstly from the costs, then from accrued interest and finally from the principal sum. If the Participant has several unpaid invoices, payments will also be deducted – with due observance of the provisions of this article – from the oldest outstanding invoice.
- 12.8 If the Participant is in arrears with its payments, Hotel Booker reserves the right to unilaterally alter the invoicing process for the Participant from Post-Paid Reservations to Prepaid Reservations and will notify the Participant thereof by e-mail or fax.
- 12.9 The Participant may not unilaterally invoke the set off of claims.

### **13. RANKING**

- 13.1 Hotel Booker operates an automated ranking system on the Websites. This system determines the position of the Hotel on the relevant results page, which is generally the results page for the destination of the Hotel's place of business.
- 13.2 The ranking system is based, among other things, on: the average customer appreciation, conversion ratio, Participant's payment history, cancellation percentages, availability and number of reservations;
- 13.3 Hotel Booker does not accept any liability for the ranking or for the position of the Hotel on the Websites arising from the ranking.
- 13.4 Hotel Booker offers what is known as a preferred status, which leads to a higher ranking for selected destinations. The preferred status is only possible at the invitation of Hotel Booker and must be confirmed by means of a separate agreement.

### **14. INTELLECTUAL PROPERTY RIGHTS / MARKETING**

- 14.1 All intellectual property rights relating to the description of the Hotel that is drawn up by Hotel Booker vest at all times exclusively in Hotel Booker. The description of the Hotel drawn up by Hotel Booker may not be used by the Participant (in any form whatsoever) for other distribution, sales and/or advertising channels or purposes, other than with Hotel Booker's written consent.
- 14.2 All intellectual property rights relating to the brand and trade name of the Hotel, the logo of the Hotel and the Information vest at all times exclusively in the Participant.
- 14.3 For the term of the Agreement, the Participant grants Hotel Booker a non-exclusive, irrevocable, royalty-free and worldwide right of use of the brand and trade name of the Hotel, the logo of the Hotel and the Information for the performance of the Services, as well as of external online and/or offline statements that are initiated by Hotel Booker, and of marketing activities, such as offline and online advertisements, including but not limited to Pay-per-Click campaigns.
- 14.4 The Participant grants Hotel Booker permission, in relation to Article 14.1 and for the term of the Agreement, to grant a sub-licence to its online and offline partners for the use of the brand and trade name of the Hotel, the logo of the Hotel and the Information.
- 14.5 Initiating or ending offline and online marketing campaigns is at Hotel Booker's sole discretion and Hotel Booker will bear the full costs thereof, unless otherwise agreed with the Participant.
- 14.6 The Participant will not make use of any terms in its online and offline marketing campaigns, including purchased search terms, which infringe Hotel Booker's intellectual property rights.



14.7 Guest Reviews:

14.7.1 Hotel Booker will ask all Guests after their stay to provide a review of the Hotel and their stay at the Hotel. This review consists of a figure-based rating and any written comments of the Guests.

14.7.2 Hotel Booker may place these reviews on the Websites at any time.

14.7.3 The Participant acknowledges that Hotel Booker is not the publisher of the reviews and that it only distributes Guest reviews by means of the Websites.

14.7.4 Hotel Booker will never be liable and can never be held liable by the Participant for the content of reviews or for the possible direct and consequential damage hereof for the Participant.

14.7.5 Hotel Booker is obliged to thoroughly check the reviews, before their distribution, for undesirable language, obscenities or any possible infringement of the privacy of individuals.

14.7.6 The Participant cannot lay any claim against Hotel Booker for changes to the content of reviews and/or the possible consequences of distributing the review.

**15. EARLY TERMINATION**

15.1 Unilateral early termination of the Agreement is only possible in the cases provided for in Article 16 of the General Terms and Conditions.

15.2 If the Agreement is terminated early by agreement, the Services performed until that stage by Hotel Booker will be charged to the Participant and paid by the Participant to Hotel Booker, notwithstanding the other rights to which Hotel Booker is entitled.

**16. TERMINATION**

16.1 Each Party is entitled to terminate the Agreement with immediate effect by giving written notice of termination, if the other Party is in breach of its essential obligations under the Agreement and – after having been given a written notice of default – does not remedy its breach within the reasonable period stipulated for that purpose.

16.2 Each Party is entitled to terminate the Agreement with immediate effect by giving a written notice of termination, without the need for a notice of default, if the other Party:

16.2.1 petitions for or is granted a moratorium on the payment of its debts;

16.2.2 petitions for its own bankruptcy, a third party petitions for its bankruptcy, or it is declared bankrupt;

16.2.3 is dissolved, liquidated or submits a petition for this purpose;

16.2.4 is placed under curatorship;

16.2.5 attachment in execution or pre-judgment attachment is levied on a considerable part of its assets and this attachment is not lifted within 30 (thirty) days of the attachment;

16.2.6 the force majeure as referred to in Article 23.1 lasts for longer than 3 (three) months.

16.3 Hotel Booker is further entitled to terminate the Agreement, by means of a written notice to the Participant, without having to observe a notice period, if circumstances arise that are of such a nature that fulfilment of the Agreement becomes impossible or can no longer be required of Hotel Booker according to the standards of reasonableness and fairness, or if circumstances otherwise arise that are of such a nature that the unaltered continuation of the order can no longer be reasonably expected of Hotel Booker.

## **17. CONSEQUENCES OF TERMINATION**

- 17.1 Termination will result in Hotel Booker removing the Information placed on the Websites from the Websites and making the hotel login provided to the Participant for its extranet inaccessible to the Participant.
- 17.2 The termination or expiry of the Agreement does not affect the rights or remedies available to – or the obligations or debts incurred by – the Parties on the termination or expiry date.
- 17.3 The termination or expiry of the Agreement does not affect the application of these general terms and conditions.

## **18. SUSPENSION**

- 18.1 Hotel Booker is entitled to suspend the performance of the Services with immediate effect, by means of written notice to the Participant, if the Participant:
  - 18.1.1 does not, in Hotel Booker's opinion, offer a sufficient number of rooms and/or packages on the Websites;
  - 18.1.2 fails to pay Hotel Booker's invoices within the stipulated period;
  - 18.1.3 charges one or more Guests more costs than it is entitled to on the basis of the Reservation and the Agreement;
  - 18.1.4 acts contrary to the Parity;
  - 18.1.5 fails to update the availability of the Hotel, which results in overbooking;
  - 18.1.6 does not provide the Information needed for the performance of the Agreement in due time to Hotel Booker;
  - 18.1.7 provides inaccurate or misleading Information;
  - 18.1.8 refuses to accept Reservations, which are valid based on the Information at the time of the Reservations;
  - 18.1.9 in any way misuses, attempts to misuse, or encourages third parties to misuse Hotel Booker's review system.
- 18.2 Suspension will result in Hotel Booker making the Information placed on the Websites inaccessible to visitors of the Websites and making the hotel login provided to the Participant for its extranet inaccessible to the Participant.

## **19. LIABILITY**

- 19.1 A Party will not be liable for indirect or consequential damage, which in any case includes loss of profit, loss of orders, reduction of goodwill and loss of sales.
- 19.2 A best efforts obligation applies to every Agreement concluded between Hotel Booker and the Participant. Hotel Booker can never be held liable for results that are not achieved. Hotel Booker is only liable for any breaches in the performance of the Agreement that are the direct result of the negligent and incompetent performance of the Services.
- 19.3 The liability of Hotel Booker for an attributable breach in the fulfilment of the Agreement can only exist if and when the Participant has given Hotel Booker an immediate and proper notice of default, stipulating a reasonable period for remedying the breach, and Hotel Booker remains in attributable breach of its obligations even after that period. The notice of default must include as detailed a description of the breach as possible so that Hotel Booker is able to respond adequately thereto.
- 19.4 Hotel Booker is not liable in any case for damage that:
  - 19.4.1 is unavoidable in the correct performance of the Services;
  - 19.4.2 is the result of the urgency demanded under the given circumstances;

- 19.4.3 is the result of inaccurate and/or incomplete information provided by the Participant;
- 19.4.4 is the result of inaccuracies and/or incompleteness that arises in the sending or transmission of Information by the Participant to Hotel Booker as a result of a lack of and/or incorrect use of the means of communication used by the Participant for that purpose;
- 19.4.5 is the result of erroneous Reservations and/or reservation requests, cancellations and no-shows;
- 19.4.6 is the result of the Participant not receiving Reservations, at all or on time, as a result of an inaccurate e-mail address, lack of an e-mail address or malfunctioning equipment on the side of the Participant;
- 19.4.7 is the result of the malfunctioning of Channel Managers or availability of Channel Managers on Hotel Booker's system. Hotel Booker must allow the Participant to inspect the Channel Managers accredited by Hotel Booker on request;
- 19.4.8 is the result of a malfunctioning Channel Manager used by the Participant and accredited by Hotel Booker, resulting in incorrect data at the Participant, the non-receipt of late receipt of Reservations or cancellations, incorrect Information on the Websites or any other direct or indirect damage to the Participant;
- 19.4.9 is the result of the use of or the inability to use the Websites;
- 19.4.10 is the result of the content of links on the Websites to external websites and links on external websites to the Websites.
- 19.5 The Participant cannot in any case derive rights or enforce any rights against Hotel Booker for inaccuracies in the description of the Hotel drawn up by Hotel Booker.
- 19.6 Hotel Booker does not in any way warrant any payment or other obligations of the Guests towards the Participant.
- 19.7 If Hotel Booker is liable for any damage, its liability will be limited to the amount that its business liability insurance pays out in the particular case. Its total liability during the term of the Agreement will moreover be limited to 10 (ten) times the average monthly Commission that it charges the Participant.
- 19.8 A Party cannot claim exclusion or limitation of liability if and insofar as the damage results from the intent, gross fault, gross negligence or wilful recklessness of that Party.

## **20. INDEMNITIES**

- 20.1 The Participant indemnifies Hotel Booker against claims of third parties regarding the intellectual property rights to the Information provided by the Participant that is used in the performance of the Agreement.
- 20.2 The Participant indemnifies Hotel Booker against any claims of third parties that suffer damage in connection with or as a result of the performance of the Agreement.
- 20.3 The Participant indemnifies Hotel Booker against all damage that arises from acts of the Participant that are contrary to the Dutch Personal Data Protection Act.

## **21. PRIVACY / PERSONAL DATA PROTECTION**

- 21.1 The Dutch Personal Data Protection Act applies to the data relating to the Guests and must be observed by the Participant.
- 21.2 The Participant may never use the data received in relation to the Guests for marketing purposes.

## **22. CONFIDENTIALITY**

- 22.1 The Participant and Hotel Booker acknowledge that each Party may come into contact with Confidential Information of the other Party during the term of the Agreement.
- 22.2 The Participant and Hotel Booker agree that the Confidential Information will remain the full property of the Provider at all times.
- 22.3 The Recipient may only use the received Confidential Information to enhance the agreed cooperation under the Agreement.
- 22.4 The Recipient must exercise due care and organise its procedures in such a way that the received Confidential Information is only accessible by and known to those people within its organisation who are authorised.
- 22.5 The Recipient of the Confidential Information may never reproduce, publish or otherwise make the Confidential Information accessible to third parties, unless there is an obligation to provide this information on the basis of a statutory provision or a court order.

## **23. FORCE MAJEURE**

- 23.1 A breach cannot be attributed to a Party if it is not to blame for that breach or it is not accountable by law, a legal act or according to generally accepted standards.
- 23.2 In case of force majeure, Hotel Booker is entitled to fully or partially suspend its performance for the duration of the force majeure situation, regardless of whether that force majeure situation arose on the side of the Participant or on the side of Hotel Booker.
- 23.3 In addition to statutory provisions and case law on force majeure, the meaning of force majeure in the General Terms and Conditions covers all external causes, whether foreseen or unforeseen, over which Hotel Booker has no control, but as a result of which Hotel Booker is unable to meet its obligations. Strikes, illness, incapacity for work and/or defects and faults in IT services in the business of Hotel Booker or in the business of Third Parties are included in this regard.
- 23.4 Hotel Booker is also entitled to invoke force majeure if the circumstance that prevents further performance commences after it should have performed its obligations.
- 23.5 Insofar as Hotel Booker has at the time of the commencement of force majeure already partially complied or will be able to comply with its obligations under the Agreement, and an independent value can be attached to the part which has been or will still be performed, Hotel Booker will be entitled to invoice this part separately. The Participant is obliged to pay this invoice as though it is a separate order.

## **24. DISPUTES**

- 24.1 All disputes between the Parties that may arise as a result of the Agreement, including the General Terms and Conditions, or as a result of further ensuing agreements or legal relationships, will be settled in the first instance by the competent court in Haarlem.

## **25. APPLICABLE LAW**

- 25.1 Dutch law applies to the General Terms and Conditions, every Agreement and any ensuing agreements and other legal relationships, as well as to the interpretation thereof.

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