

General Terms & Conditions (GTCs) for destination marketing by the Tiscover GmbH group of companies (booking solutions – Web design - online marketing)

Valid in Austria, Germany, Switzerland, Liechtenstein and Italy from 1.5.2009

1. General

- 1.1. These General Terms & Conditions (GTCs) govern the mutual rights and obligations of Tiscover (hereafter referred to as "the Provider") and the customer ("the Customer") unless agreed otherwise elsewhere.
- 1.2. Agreements will be concluded on the basis of the relevant offer by the Provider or an order by the Customer, which in each case contains details of the scope of the service and the associated remuneration. Offers from the Provider shall be provisional and non-binding.
- 1.3. Post-hoc changes to the content of the service must be made in writing. This does not apply to changes deemed reasonable towards the Customer. Furthermore, all offers are subject to availability of the offered advertising platforms.
- 1.4. All agreements must take the written form to be valid or submitted by fax signed by an authorised signatory.

2. The Customer's duty to cooperate

- 2.1. All services provided by the Provider (especially all preliminary drafts, sketches, artwork, rough proofs, blueprints, colour prints, banners and Internet pages) must be checked by the Customer and approved within the space of three working days. Failure to grant approval by the deadline will be considered acceptance by the Customer. If the Customer explicitly objects within the aforementioned timeframe, he must at the same time supply the Provider with detailed and comprehensible grounds for this in writing. The Provider will be entitled within a suitable timeframe to make good or replace a service about which the Customer has reported shortcomings, and to present the relevant service to the Customer once again for approval as per Section 2.1 above. The provisions of Section 7 will not be affected by Section 2.1.
- 2.2. The Customer will be obliged to supply the Provider without delay with all the information and documentation required to provide the service. Images, audio recordings, text and similar materials must be supplied without delay in a standard, immediately utilizable and where possible digital format. If the materials supplied by the Customer have to be converted into another format, the Customer will be responsible for any costs this generates.
- 2.3. In addition, the Customer will be obliged to notify the Provider about all procedures that are of relevance for the fulfilment of the order, even if these circumstances only come to light during fulfilment of the order. The Customer will be liable for an expenditure generated through the Provider having to repeat or postpone work as a result of incorrect, incomplete or belatedly changed information supplied by the Customer.
- 2.4. The Customer is furthermore obliged to check the existing copyright, trademark and other Third-Party rights applicable to the materials provided for the fulfilment of the agreement (photos, logos, etc.). The Provider will not be liable for any breaches of such rights. The Customer will indemnify the Provider against any claims of breaches of these rights and agrees to reimburse all financial penalties and other detrimental effects incurred by the Provider pursuant to Third-Party claims, including necessary and acceptable costs for legal defence.
- 2.5. The form, content and pursued aim of the Customer's advertising may not be illegal or constitute a breach of moral decency. The Customer pledges that the services provided or advertising developed by the Provider will not distribute discriminatory, racist, violence-glorifying, erotic, pornographic and/or extreme left- or right-wing content nor refer to such content. The Provider will in no way be obliged to check this. The Customer will be liable for any breaches of the law or of moral decency by his advertising.
- 2.6. Digital documentation supplied by the Customer must be free of so-called "computer viruses" and other sources of damage (malware). To this end he will be obliged in particular to use standard protection programs which must in principle conform to the technical status quo. Should any supplied files be found to contain malware, the Provider will not utilize them and, where necessary to avoid or contain the potential damage, delete these. The Customer may not claim compensation for this. The Customer will be liable towards the Provider for all damage caused to the Provider by malware passed on by the Customer.
- 2.7. Tiscover can only meet the agreed provision and delivery dates if the Customer supplies it with the required documentation in good time and in the agreed form and cooperates in every other manner necessary.

3. Third-Party services and commissioning

- 3.1. The Provider is free to decide whether to provide the service himself, call on the services of Third Parties (independent contractors) for the fulfilment of the contractual services and/or substitute such services.
- 3.2. The Provider will take care in choosing his independent contractors, and must take care to ensure that they possess the necessary specialist qualifications. The Provider will not accept any responsibility for the products and services of Third Parties nor guarantee their operation or availability.
- 3.3. The Customer is aware that the Provider can neither set nor make any guarantees regarding the time taken to register or activate a domain. If the Provider is commissioned to take over an existing domain and this change is rejected by the relevant domain registration body (e.g. nic.at Internet Verwaltungs- und Betriebsgesellschaft mbH, A-5020 Salzburg) or a responsible registrar (e.g. one of those listed on <http://www.nic.at/ui/index.php/registrarliste/?lang=en-iso-8859-1>), the Customer will be obliged to meet any costs this generates. In requesting the change of domain, the Provider's domain registration obligations will be deemed to have been met.

4. Utilisation and rights

- 4.1. Changes to the Provider's services, including in particular the development thereof by the Customer or a Third Party operating on the Customer's behalf, are permitted only with the expressed consent of the Provider and – where the services are protected by copyright – the holder of the copyright.
- 4.2. The Provider's consent is also required for any utilisation of his services beyond the originally agreed purpose or scope, no matter whether or not the service is covered by copyright. For this the Provider and copyright-holder must be paid special and appropriate remuneration.
- 4.3. The Customer must also seek the Provider's consent for any use after the termination of contractual relations of the Provider's services or of advertising for which the Provider drew up conceptual or design templates, no matter whether or not the service is covered by copyright.
- 4.4. The Customer may not pass on, change or develop Tiscover's services or pass on the received login details to Third Parties.
- 4.5. The Customer must pay Tiscover appropriate remuneration for any presentations given. Unless separate agreement is reached on this, this must however include at least Tiscover's material and personnel costs as well as covering all Third-Party services.
- 4.6. If the Provider is not awarded a contract after he has given a presentation, all the Provider's services, especially the presentation documentation and their content shall remain the Provider's property. The Customer will not be authorised to re-use these in any form whatsoever, rather the documentation must be returned to the Provider without delay. The presentation documentation may not be passed on to Third Parties, copied, distributed or utilised in any other way without expressed consent from the Provider.
- 4.7. Furthermore, the Customer is forbidden from using any of the ideas and concepts introduced in the course of the presentation, no matter whether or not these ideas and concepts are protected by copyright. Payment for the presentation does not grant the Customer any exploitation or utilisation rights to the presented services.
- 4.8. If any ideas and concepts introduced in the course of the presentation to solve communication tasks are not used by the Provider to create advertising for the Customer, the latter may utilise and exploit these presented ideas and concepts for other purposes.
- 4.9. All un-presented concepts, drafts and documents as well as other services from Tiscover will however remain Tiscover's property and must be returned to Tiscover by the Customer. Further use or passing on of the presentation documentation to Third Parties as well as their publication, copying or other distribution is forbidden.

- 4.10. Tiscover may reutilise or exploit further all ideas and concepts it develops and presents, but which do not lead to the conclusion of an order.

5. Naming

- 5.1. The Provider will be authorised to name himself and the copyright-holder on all advertising and ad campaigns without having to make any payments to the Customer.
- 5.2. The Provider will be entitled to mention his business relations with the Customer in his own advertising and especially on his Website, naming and/or using the logo of the Customer. However, the Customer may at any time retract his consent to do so. Furthermore, the Provider is entitled for demonstration purposes to publicly quote or refer to the provided services unless the Customer can prove that it is not in his interests.

6. Deadlines

- 6.1. All deadlines and agreed dates must be laid down in writing and confirmed. The Provider will endeavour to meet the agreed deadlines. In the event of a failure to meet a deadline, the Customer may take advantage of his legal rights only after granting the Provider an appropriate extension of at least 14 days. This extension will start on the date the Provider receives a reminder.
- 6.2. Should the Provider fail to provide the service by the extended deadline, the Customer will be entitled to withdraw from the agreement. The Provider will only be required to pay compensation following the Customer's withdrawal in the event of wrongful or gross negligence on the part of the Provider .
- 6.3. Unavoidable or unforeseeable events, especially delayed delivery by the Provider's suppliers, indemnify the Provider from meeting the agreed deadlines. The same applies if the Customer is late in meeting obligations required for the fulfilment of the agreement (e.g. supplying documentation or information). In this case, the agreed deadline will be moved forward by at least the length of the delay.
- 6.4. The Provider's supply obligations will be deemed met when the work and services required for delivery have been undertaken. The Customer will bear sole responsibility for the risks associated with sending (e.g. damage, loss and delay), no matter what the transfer medium.
- 6.5. In the case in which Internet pages are created, uploading of the pages will constitute completion.

7. Warranty and liability

- 7.1. Customer complaints must be made in writing within three days of delivery of the services by Tiscover, with the onus of proof resting with the Customer. If not, the complaint will be deemed null and void.
- 7.2. If the Customer's complaint is justified, Tiscover will improve or replace the inadequate service within an acceptable timeframe.
- 7.3. In the case of online services, the Provider guarantees to display the advertising in the best possible manner and in accordance with the normal technical standard. However, the Customer is aware that the technical status quo does not enable completely error-free programs to be created. For this reason, the guarantee does not cover negligible errors. Negligible errors in displaying the advertising in particular if caused by
 - Use of inappropriate display software and/or hardware (e.g. browser)
 - Faults in the communication networks of other providers
 - Incomplete and/or outdated offers on so-called proxies (caches)
- 7.4. Furthermore, the Provider will not guarantee that his services and the data published on the Internet will be available at all times and error-free. This will apply in particular if access to the services and the Provider's Web page is prevented through faults outside the Provider's control or which cannot be influenced by the Provider, even if the fault occurs in an area under its control (e.g. a technical breakdown of a server such as, for example, a hardware or

software error that is being repaired by the Provider). Tiscover will endeavour to repair any faults that are proven to lie within its area of responsibility by the relevant deadline. This work will begin during normal repair times (weekdays from 8am to 5pm excluding Saturdays and 24 and 31 December of each year) and be complete within by the given timeframe to the best of Tiscover's technical and operational abilities. The cost of the assessment and repair of such faults outside the normal repair times will be charged separately to the Customer as per the relevant Tiscover pricelist.

- 7.5. The Provider's reversed burden of proof as per Art. 924 of the Austrian Civil Code may not apply. It is up to the Customer to prove the existence of shortcomings at the time of the handover, the time at which the fault was detected and the timeliness of his complaint.
- 7.6. The Customer may not make claims for compensation, in particular on the grounds of delayed provision, the inability to provide a service, positive violations of contractual obligations, indebtedness at the time of the conclusion of the agreement, inadequate or incomplete provision of a service, and damage occasioned by shortcomings in the service, except in the case of wrongful or gross negligence on the part of the Provider. All claims will be limited in size to the total value of the agreement excluding tax. Where legally admissible, no liability will be accepted for loss of income, indirect or consequential damage, damage from claims by Third Parties, breaks in access to the offered services and breakdowns in the functioning of these services or for lost or changed data.
- 7.7. All claims for compensation must be pressed within six months of detection of the damage. In addition, all claims arising out of this contractual relationship will be governed by the statute of limitations and cease to apply one year after the end of the year in which the claim was made and the guarantor was made aware of the circumstances of the claim or must have become aware of in the absence of wrongful negligence.
- 7.8. The Provider will undertake the assigned tasks subject to the generally recognised legal principles, and notify the Customer in good time about any risks he recognises. Under no circumstances will the Provider be liable for claims against the Customer on the basis of the advertising (i.e. the use of a trademark). In particular, the Provider will not be liable for the cost of legal proceedings, the Customer's legal fees or the cost of legal publication nor for any Third-Party claims for compensation or similar Third-Party claims.
- 7.9. The Provider will be liable within the legal framework only for damage proven to be caused by wrongful or gross negligence on his part. No liability will be accepted for minor negligence. The onus of proof of gross negligence rests with the injured Party.
- 7.10. Liability will be limited to the extent of personal guilt and that of assistants and employees.
- 7.11. The Provider will not in principle be liable for the advertising success of the distribution of advertising.
- 7.12. The Customer is aware that the Provider may employ different versions of Third-Party software in the course of providing his services. The Customer is furthermore aware that the use of a new version of such Third-Party software may be required or expedient (this is especially the case if, for example, a new version gets rid of security risks), although for compatibility reasons in particular the use of such new versions may require migration or conversion of existing or already embedded content, files or other information.

In addition, the Customer is aware that Web presences designed and/or produced by Tiscover, e.g. Web pages, may need to be reworked technically (e.g. reprogrammed, migrated or converted), especially as a result of changes in the version of the Third-Party software that the Provider employs to provide his services, changes which may cause compatibility problems. Tiscover points out that such technical reworking of Web presences is usually not necessary for a period of four years from the date of creation, although it cannot guarantee this.

Tiscover also points out that the Third-Party software currently employed may be replaced by other Third-Party software at any time. The Customer is therefore aware that Web presences (e.g. Web pages), content, files or other information designed and/or produced by Tiscover and/or already embedded may also need to be reworked technically (e.g. reprogrammed, migrated or converted) if the Third-Party software employed by the Provider is replaced.

The cost to Tiscover of this reworking and/or migration and/or conversion of Web presences, content, files and/or other information will be charged to the Customer as per the relevant applicable Tiscover pricelist.

If the Customer decides against technical reworking (e.g. reprogramming, migration or conversion) of any content, file or other information and/or a Web presence, the content, file, other information and/or Web presence must remain available online for an acceptable period. At the end of this period, Tiscover will be entitled to deactivate the content, file, other information and/or Web presence without repercussions. It will then no longer be accessible over the Internet.

8. Remuneration and payment terms

- 8.1. Unless agreed otherwise elsewhere, the Provider will be entitled to remuneration for each service the moment it has been provided. Tiscover will be entitled to demand advance payments to cover its costs. In all cases, the agreed amounts do not include value-added tax at the legally applicable rate. Payment is due within 14 calendar days of the invoice date.
- 8.2. Estimates issued by the Provider are in principle non-binding. If it becomes apparent that the actual costs will be more than 10% higher than those estimated in writing by the Provider, he will notify the Customer about the higher costs. Unless the Customer objects to this notification within three days, simultaneously suggesting more cost-effective alternatives, the increased cost will be deemed as having been accepted by him.
- 8.3. The Provider will be entitled to appropriate remuneration for all work he undertakes but which is not realised by the Customer, whatever the reason. Payment of this remuneration by the Customer will not grant him any rights to this work. Rather, all non-realised concepts, designs and other documentation must be returned to the Provider without delay. Section 4, in particular Sections 4.9 and 4.10, remain unaffected by this.
- 8.4. In the event of late payment by the Customer, even through no fault of his own, the Provider will be entitled to charge late payment interest 12% above the basic interest rate per annum. The right to claim compensation for proven higher interest remains unaffected by this.
- 8.5. In the event of late payment, even through no fault of his own, the Customer pledges to reimburse the Provider for all reminder and debt recovery costs, provided these are necessary to pursue appropriate legal proceedings and proportional to the amount being recovered. In particular, the Customer pledges to reimburse the Provider for the cost of employing a debt collection agency, provided the fee demanded by the debt collection agency does not exceed the maximum permitted by the decree issued by the Austrian Federal Ministry of Economy and Labour (BMWA). If the Provider does not issue reminders himself, the Customer pledges to pay a fee of EUR 20 per reminder as well as a six-monthly fee of EUR 5 for maintenance of the debt within the debt collection system. In addition, all other costs, especially those arising if non-payment causes the Provider to pay a higher rate of interest on any loans he may have, must also be reimbursed, even if the Customer is not at fault for the late payment. In the event that the Customer makes unjustified changes to an invoice, a EUR 45 administrative fee will be charged.
- 8.6. Tiscover will be entitled to charge a fee of EUR 0.25 per fax for faxes that the Customer sends to more than 50 recipients (serial faxes) through the Tiscover system (e.g. 51 faxes = EUR 12.75).

9. Data protection

- 9.1. The Customer will be obliged to make copies of all data sent to the Provider, no matter in what form. In the event of data loss, the Customer will be obliged to resend the relevant data to the Provider at no cost.
- 9.2. To enable him to manage his virtual host/CMS database, the Customer will be issued with a username and password for each campaign. With respect to this, he will be obliged to take care of his username, prevent Third Parties from accessing it, and protect it against misuse and loss. The Customer indemnifies the Provider against costs and claims by Third Parties generated by breaches of the above obligations.

- 9.3. The Customer is aware that transferred data may be intercepted during transfer, and takes this risk into account. Furthermore, the Provider cannot be held liable for preventing Third-Party access to data or files stored on a virtual host/server.

10. Withdrawal from an agreement

The Provider will be entitled to withdraw from an agreement in particular if

- The services cannot be provided for reasons pertaining to the Customer and delayed further despite a new deadline having been set, although in this case the Provider will be at liberty to choose whether to demand suitable remuneration for the (part) services he has provided or reimbursement of the costs that he has incurred;
- There are justified concerns about the Customer's creditworthiness and he fails to respond to the Provider's request for advance payment or offer a suitable security before the Provider begins providing the service;
- Repeatedly uses online services in breach of contract or once in gross breach of contract. Furthermore, this will lead to immediate withdrawal of the right of access and charging of the costs of localising the damage, determining its extent and repairing the damage.

11. Wholesale transfer of an agreement; embedding in other systems

11.1 Tiscover will have the right to transfer this agreement to all companies in which Tiscover or its majority shareholder has direct or indirect holdings. The Partner also agrees to the sale of his accommodation on other reservation systems, in particular www.hrs.com.

11.2 If Tiscover is not the Partner's direct Contractual Partner, the direct Contractual Partner will be entitled to transfer the contractual relationship as well as all associated rights and obligations to Tiscover, who will then become the Partner's direct Contractual Partner in place of the original direct Contractual Partner. In the event of such a contractual transfer, the Partner's original direct Contractual Partner will be liable towards the Partner and Tiscover as joint debtor for the duration of one year from date of the completed transfer of the contractual relationship.

12. Severability clause

If any of the provisions in this contractual document prove invalid, this will not affect the validity of the remaining contractual provisions.

13. Changes to the General Terms & Conditions

The Provider will be entitled to change or supplement these General Terms & Conditions at any time. Unless the Customer objects to the changed GTCs within a period of four weeks of receiving the notification of the changes, the new General Terms & Conditions will come into effect as notified, even with regard to existing contractual relations. If the Customer objects before the given deadline, the Provider will be entitled to terminate the agreement on the date at which the changed GTCs were due to come into effect.

14. Court of jurisdiction

All contractual relations are subject to Austrian law to the exclusion of UN purchasing law and the reference provisions of international private law. The exclusive place of performance and court of jurisdiction will in all cases be Innsbruck.

15. Additional provisions regarding the use of the Tiscover Destination Management System

15.1 General

The relevant contractual relationship arises from the agreement concluded between Tiscover and the Customer on the use of the Tiscover system. The scope of the functions is defined in the product information available over the Internet or the agreement concluded between Tiscover and the Customer.

Unless stated otherwise in the present section, the above Sections 1 to 14 of the GTCs also apply to the use of the Tiscover Destination Management System. Should the provisions of Sections 1 to 14 above contradict those in Section 15, the provisions of Section 15 will have priority.

15.2 The Customer's rights and obligations

The Customer can access the Tiscover system by entering his username and password. The Customer pledges not to divulge usernames and passwords and to prevent them being accessed by unauthorised Third Parties. The Customer must ensure that several users do not access the system simultaneously. The Customers will be liable in full for the consequences thereof.

15.3 The Provider's rights and obligations

- 15.3.1 For the duration of the agreement, the Provider grants the Customer non-exclusive access to the latest version of the system over the Internet at no charge. The Provider is entitled to change and in particular expand, improve or restrict the system or individual parts thereof. The Customer will be notified of such changes in good time by newsletter, over the Internet or in another suitable form.
- 15.3.2 If the Provider makes non-proprietary software – i.e. software developed by a Third-Party – available to the Customer, the scope of the Customer's utilisation rights will be restricted to the utilisation rights that the Third Party has granted to the Provider. In this case, the Provider will at the Customer's request be obliged to disclose the scope of the utilisation rights that the Third Party has granted the Provider.
- 15.3.3 The Customer can upload and replace photographs onto the Internet himself at any time free of charge via the Tiscover extranet. Tiscover may download photos, graphics and logos free of charge from the Hotel's Web pages for use on the Tiscover system and on other sales channels and related marketing campaigns. The Customer guarantees that photos, graphics, logos supplied to Tiscover and downloaded data and files are not covered by Third-Party copyright which could limit or prevent their unrestricted use by Tiscover. Tiscover may reject photos that do not meet the Tiscover standard at any time. The Customer may indicate that he is connected to the Tiscover system in his prospectuses, hotel guides and other publications as well as on his homepage. To this end, he may use the logos made available free of charge for this purpose at www.abouttiscover.com. Furthermore, Tiscover may use the information provided by the Customer (especially the name, brands, photos etc.) for marketing and sales purposes (e.g. advertising, online campaigns such as meta tags and keyword advertising) as well as on other sales channels. Section 2.4 remains unaffected by this.
- 15.3.4 Regardless of any termination, Tiscover may reuse all content, including photographic material, made available or supplied by destinations, alliances and campsites. It will be entitled to do so free of charge and for an indefinite period, even for the purposes of advertising, regardless of whether or not a contractual relationship has been terminated.

15.4 Validity period and termination

- 15.4.1 Agreements are concluded for one-year periods and are extended automatically by a further year unless terminated in writing by either Party to the end of the relevant contractual year with six months' notice.
- 15.4.2 The agreement annuls and replaces all previous agreements regarding use of the Tiscover Destination Management System.

15.5 Remuneration and payment terms

- 15.5.1 The size of the remuneration is defined within the relevant agreement between Tiscover and the Customer. In all cases, the agreed amounts do not include value-added tax.
- 15.5.2 100% of the value of the order for the first contractual year is due upon signing. The payment for the following year is due on the day on which the next contractual period begins. Payment is due within 14 calendar days of the invoice date.
- 15.5.3 All additional services, e.g. training courses, as well as other expenditure by Tiscover must be agreed separately. Deviations requested by the Customer to the agreed work and hours may be billed separately.
- 15.5.4 The stability of the value of the Provider's claims and accessory claims is explicitly agreed. The gauge used to calculate the stability of the value is the monthly "2005 Consumer Price Index (2005=100)", published monthly by the Austrian Bureau of Statistics, or another index. The value of the index calculated for the date on which the agreement is signed can be used as the standard. All change rates must be calculated to one decimal place.

15.6 Warranty and liability

- 15.6.1 The Customer is aware that the Tiscover system is based on electronic procedures that may be interfered with in spite of the security measures in place. For this reason, Tiscover will be liable for breach of contract only in cases of wrongful or gross negligence, in particular with respect to the availability and accessibility of the Tiscover system to both the Customer and the end consumer. Furthermore, Tiscover will be liable in cases of ordinary negligence only if it acts in breach of obligations essential to the fulfilment of this Contract (its cardinal duties).
- 15.6.2 Tiscover will secure the accessibility (performance, response times, entries, down times, etc.) of the system and the associated relevant data on the destination and the service provider unless provision of these services is prevented by Third Parties and/or circumstances attributable to Tiscover, although normal operational down times (e.g. maintenance work) which do not go beyond what is absolutely necessary are not deemed damaging. Tiscover guarantees system availability of 98% in any calendar year.
- 15.6.3 Unless agreed otherwise elsewhere than in these GTCs, the Provider will not be liable or required to provide his services in the event that his infrastructure breaks down as a result of force majeure, strikes, lockouts, official action or interruptions in the power supply, telecommunication or data transfer infrastructure of the relevant network operators.
- 15.6.4 The Customer is and will remain responsible for the functioning of his own systems.
- 15.6.5 The Provider will not accept liability for the functioning of telephone lines to a server, for power cuts or server breakdowns that are beyond his control.
- 15.6.6 Tiscover will not accept any liability for the costs of or any errors caused by (post-hoc) changes or contract-breaching action by the Customer or Third Parties.

15.7 Data hosting

- 15.7.1 If the Provider is commissioned to host data, the Customer will at all times retain sole authority over the data. Tiscover will make standard interfaces available to the Customer for exporting the following data: accommodation, guest and booking data. Data exporting will be charged at cost.
- 15.7.2 The Provider is obliged to take appropriate steps to prevent data loss, for instance following or during computer crashes and prevent unauthorised access to this data by Third Parties. To this end the Provider will make regular backups and install firewalls and similar protective measures. Login data (usernames and passwords) used to grant the customer secure access to the data must not be made accessible to Third Parties.
- 15.7.3 The Provider's employees may only gain knowledge of login data or access to the Customer's stored data if this is absolutely necessary for the fulfilment of the agreement.

If any of the Customer's employees who are aware of the login data leave the company, the Customer will be responsible for requesting a change in the login data.

15.8 Data protection

The Provider is aware of the applicable data protection regulations and will abide by the legal data protection regulations in their relevant applicable version.