

## TERMS AND CONDITIONS TOP BOOKINGS

### 1. GENERAL

#### 1.1 Applicability

- 1.1.1 These conditions are applicable to all proposals and/or deliveries made by Top Bookings and agreements and/or other legal relationships between Top Bookings and Customer, the resulting provisions and related activities regardless of whether or not they are based on a verbal, written and/or electronic agreement, unless otherwise agreed upon in writing.
- 1.1.2 **Purchase conditions or any other conditions used by Customer will not be applicable.** The applicability of purchase conditions or any other conditions from Customer or from third parties on behalf of Customer is therefore expressly rejected by Top Bookings, unless explicitly accepted in writing by Top Bookings.
- 1.1.3 Top Bookings reserves the right to make alterations and/or additions to the General Conditions Top Bookings. The modified General Conditions Top Bookings will become applicable, unless objections against modifications are made in writing within 30 (thirty) days of the notification date of the change.
- 1.1.4 Changes in and additions to the General Conditions Top Bookings and/or agreements made between Top Bookings and Customer are only valid when agreed to by Top Bookings in writing.
- 1.1.5 If Customer consists of more than one legal entity or organization, each will be responsible for the entire fulfillment of the obligations that may flow forth from the agreement with Top Bookings.
- 1.1.6 The headings above the clauses of these conditions are only intended to increase the legibility of this document. The content and meaning of a clause placed under a particular heading is, therefore, not limited to the meaning and content of the heading.

#### 1.2 Definitions

- 1.2.1 In the General Conditions Top Bookings the following words and expressions are capitalized. Any of the following words and expressions shown in the singular shall have the same meaning when used in the plural and vice-versa.
- 1.2.2 ASP-service:  
ASP (Application Service Provider)-service constitutes the direct and/or indirect (through a third party) provision by Top Bookings of Products through a web-based application.
- 1.2.3 Back-up:  
Spare copies of digital data and/or information.
- 1.2.4 Business Days:  
Normal Dutch working hours (8.30-17.30 CET) and days (Monday through Friday) with the exception of public holidays.
- 1.2.5 Top Bookings:  
Top Bookings B.V. and its rightful successors or affiliated organizations and partners that will enter into an agreement with Customer and has declared the General Conditions Top Bookings applicable.
- 1.2.6 Customer:  
Anyone who requests and orders the delivery of Products.
- 1.2.7 Top Bookings Products:  
All products and services provided by Top Bookings and the resulting provisions and related activities, which do not originate from third parties and whose intellectual property rights, industrial property rights and other rights are held by Top Bookings.
- 1.2.8 Fair Use:  
The reasonable use by Customer of the Products.
- 1.2.9 Identification Codes:  
Usernames, passwords, address codes and/or other codes.
- 1.2.10 Process-data:  
The data entered within the ASP-service by Customer and/or data entered by third parties.
- 1.2.11 Products:  
All Top Bookings Products and/or Third Party Products provided by Top Bookings, the resulting provisions and related activities. ASP-service is considered a Product.
- 1.2.12 Third Party General Conditions:  
Third Party General Conditions are amongst others understood as the delivery conditions, license conditions, warranty

conditions or other conditions maintained by a third party.

#### 1.2.13 Third Party Products:

All products and services provided by Top Bookings, the resulting provisions and related activities, which originate from third parties and whose intellectual property rights, industrial property rights and other rights are not held by Top Bookings.

#### 1.3 Confirmation

- 1.3.1 Verbal agreements, assignments or other expressions of whatever nature by employees of Top Bookings are only valid and binding when they have been confirmed in writing by authorized representatives of Top Bookings.

#### 1.4 Offers

- 1.4.1 All offers made are without engagement, unless the offer explicitly indicates otherwise in writing.
- 1.4.2 Offers are based on the data, information or requirements made known by Customer as set out in clause 1.6.

#### 1.5 Agreements

- 1.5.1 If a proposal, contract or other similar legally binding document is sent by Top Bookings to Customer and Customer fails to return this document, signed, to Top Bookings, Customer accepts by payment of compensation to Top Bookings the contents of that document and the General Conditions Top Bookings.

- 1.5.2 An agreement between Top Bookings and Customer, for which no further contract and/or term has been agreed, has a term of 1 (one) year if the delivery concerns a Product for which a periodic fee is charged. If this agreement is not terminated or not timely terminated, it shall be extended repeatedly in increments of 1 (one) year.

- 1.5.3 Termination of the agreement as described in clause 1.5.2 occurs by means of a registered letter, which must be received by the other party no later than 40 (forty) days prior to commencement of the extension date of the agreement.

- 1.5.4 Each party has the right to terminate the agreement wholly or partially without judicial intervention by means of a signed registered letter. This can be done if, after notifying the breaching party in writing of a failure to fulfill its obligations, the breaching party then fails to meet the aforesaid obligations within a reasonable period of time.

- 1.5.5 Each party has the right to immediately terminate the agreement, wholly or partially, without judicial intervention through means of a non-judicial declaration and/or withdraw and/or annul an offer if the other party is a person and becomes deceased, if the other party submits a legal request for debt restructuring, if bankruptcy or suspension of payment has been filed for by the other party, if the other party is in a state of bankruptcy or suspension of payment has been granted or if the other party's company is liquidated or ended for any reason other than reconstruction or company merger. In these cases, any claim by Top Bookings will be immediately due.

- 1.5.6 After the agreement has been ended, for any reason, Customer can no longer obtain any of the rights provided by the agreement, leaving unhindered the existence of the obligations of both parties which by their nature continue automatically after the conclusion of their agreement, such as but not limited to, obligations concerning property rights, confidentiality and non-competition.

#### 1.6 Co-operation/Information Requirements For Customer

- 1.6.1 All assignments are carried out by Top Bookings on the basis of data, information, requests and/or requirements made known to Top Bookings by Customer.

- 1.6.2 Customer shall provide all necessary cooperation to Top Bookings and shall make timely known all useful and necessary data and/or other information required for an adequate execution of the agreement. Customer shall ensure the accuracy of this data and/or other information.

- 1.6.3 If data, information and/or requirements necessary for execution of the agreement, are not provided, not timely provided and/or not provided in accordance with the agreement, or if Customer fails to meet its obligations in any other way; then Top Bookings has in any case the right to terminate or dissolve the agreement or to suspend execution of the agreement and Top Bookings has the right to charge the costs incurred at its usual rates.

- 1.6.4** If changes and/or new facts arise in regard to data, information, requests and/or requirements previously provided, Top Bookings will always be fully justified, in consultation with Customer, to adjust the agreement to these new circumstances or to dissolve or annul the agreement.
- 1.6.5** In the event Top Bookings performs activities in a location other than its own, Customer will be responsible for providing free of charge reasonably requested facilities, such as office space and telecommunication facilities.
- 1.7 Confidentiality/Non-competition**
- 1.7.1** Top Bookings and Customer mutually commit themselves to the confidentiality of all data and information concerning each other's organization, clients, files and Products, of which they become aware while working for each other or for Customer's clients. Data and information may only be used in order to carry out the agreement between parties.
- 1.7.2** Top Bookings is authorized to place the name and logo of Customer or Customer's clients who are given rights to the Products on the Top Bookings website and/or reference list and to make them available to third parties for information.
- 1.7.3** Customer and its clients will not enter into any direct or indirect commercial, employment, or other such relations with employees from Top Bookings during the agreement and for a period of 12 (twelve) months after termination or dissolution of the agreement, without the written consent of Top Bookings. Customer will ensure that its clients will comply with the foregoing obligation.
- 1.7.4** In the event that Customer breaches clause 1.7.3, Customer will be charged, without further notification required, a fine of € 50,000 (fifty thousand euros) for each breach, undiminished the right of Top Bookings to claim full compensation for damages incurred.
- 1.8 Liability**
- 1.8.1** Top Bookings' total liability shall be limited, in accordance with clauses 1.8.2, to compensation for direct damage and to a maximum of the amount of the price stipulated in the agreement (excluding VAT) to a maximum of € 50.000,- (fifty thousand euros), whereby a sequence of events is regarded as one event.
- 1.8.2** If the agreement also includes an agreement over time with a term of more than 1 (one) year and Top Bookings' liability flows forth from the agreement over time, the stipulated price will be calculated on the basis of the total amount (excluding VAT) as actually paid by Customer to Top Bookings on the basis of the agreement over time for 1 (one) year (this being the year in which the damage occurred) to a maximum of € 50.000,- (fifty thousand euros).
- 1.8.3** Top Bookings' total liability for damage resulting from death or physical injury will in no event amount to more than € 1,000,000 (one million euros), whereby a sequence of events is regarded as one event.
- 1.8.4** Direct damage is exclusively understood as:
- The reasonable costs made in determining the cause and extent of the damage;
  - The reasonable costs incurred in prevention or limitation of the damage, to the degree that Customer can demonstrate that these costs have led to the limitation of the damage.
- 1.8.5** Top Bookings' liability for indirect damage, including consequential damage, loss of profit, loss of savings, mutilated and/or lost data, delays, losses, damage as a result of a failure of Customer to provide the required information or assistance, damage through corporate inactivity and/or claims from third parties against Customer, is expressly rejected.
- 1.8.6** With the exception of the cases named in this clause 1.8, Top Bookings has no liability for damage compensation regardless of what an action towards compensation could be based upon.
- 1.8.7** Top Bookings' liability exists solely when Customer immediately and appropriately notifies Top Bookings of the deficiency in writing, proposing therein a reasonable time period for correction of the deficiency and Top Bookings then culpably fails to meet the aforesaid obligations. The notification of deficiency ought to be as detailed a description of the deficiency as possible so that Top Bookings is able to react adequately.
- 1.8.8** The condition for the existence of any right to compensation is always that Customer notifies Top Bookings in writing by registered mail within 60 (sixty) days after the damage came into existence and takes the necessary measures to limit the damage as much as possible.
- 1.8.9** Customer indemnifies Top Bookings from all liability regarding third parties due to allegations as a consequence of deficiency in a product, system or service provided by Customer to third parties that consisted of a delivery made by Top Bookings.
- 1.8.10** Top Bookings does not accept any liability for damage regardless of its nature caused by Third Party Products which Top Bookings has delivered to Customer. If possible Top Bookings will transfer its rights for damage compensation from the supplier of the Third Party Product in question to Customer.
- 1.8.11** Top Bookings is not liable for any damage regardless of its nature, which is the result of a failure to provide support and/or maintenance on time.
- 1.9 Transfer**
- 1.9.1** The agreement between Top Bookings and Customer and the rights and obligations, which flow forth from this agreement, cannot be transferred to a third party by Customer without the prior written consent from Top Bookings.
- 1.9.2** Customer gives Top Bookings in advance the right, without needing the explicit approval of Customer, to transfer the whole agreement or parts thereof to:
- holding-, sister- and/or subsidiary companies;
  - a third party in the case of merger or acquisition of Top Bookings.
- In the event this happens, Top Bookings will inform Customer.
- 1.10 Force Majeure**
- 1.10.1** Neither party is obligated to fulfill any obligation if they are prevented from doing so as a result of circumstances, which can be considered beyond their fault, and for which a party cannot be held accountable for by law, legal act, or generally accepted practices. The aforementioned circumstances include circumstances that are beyond Top Bookings' power as well as business risks of Top Bookings, these include but are not limited to failure to perform by a supplier of Top Bookings, the late or non-availability of required information and specifications and/or changes in such information, incorrect functional specification of Third Party Products and/or products delivered by a third party, bad weather conditions, fire, explosions, electricity failures, network failures, floods, illness, lack of staff, strike or other employment conflicts, accidents, actions by the government, not being able to obtain required licenses and/or permits, lack of materials, theft, traffic disruptions and/or transportation problems.
- 1.10.2** When force majeure is of a temporary nature, Top Bookings has the right to suspend its commitments until the force majeure has ceased to exist without being obliged to any form of damage compensation.
- 1.10.3** Top Bookings reserves the right, in the case of force majeure, to collect payment for obligations already fulfilled before force majeure was known.
- 1.10.4** In the event that the force majeure of either party surpasses a three month period, either party has the right to terminate the agreement without being obliged to any form of damage compensation regarding such termination.
- 1.11 Nullity**
- 1.11.1** If one or more terms (or part of a term) of the agreement are nullified, declared to be nullified, annihilable or have lost their validity in another way, the other terms (or part of the term in question) of this agreement will remain in force undiminished.
- 1.11.2** In regard to terms (or part of the term) that are nullified, declared to be nullified, annihilable or lose their validity in another way, parties shall consult with each other to try to reach a substitute arrangement with in which the parties shall strive for the

maintenance of this agreement (or the remainder of the term in question) in its totality.

## **1.12 Applicable Law and Dispute Mechanism**

**1.12.1** All agreements made between Top Bookings and Customer are governed by the laws of The Netherlands. Parties explicitly agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.

**1.12.2** Any dispute between parties arising under any agreement, which cannot be resolved amicably, will be placed before a qualified court in Amsterdam, The Netherlands.

## **2. TOP BOOKINGS PRODUCTS**

### **2.1 User Rights Products**

**2.1.1** Customer is granted the non-exclusive right to use the Products and corresponding documentation.

**2.1.2** User rights are limited exclusively to own use of the Products for the with Top Bookings agreed upon number of users, homes, number of bookings, server space and data traffic.

**2.1.3** It is prohibited for Customer directly or indirectly (through a third party) to copy, duplicate or alter the Products in any way, without the prior written approval from Top Bookings.

**2.1.4** User rights on the Products cannot be transferred to any third party (third parties also include holding-, sister- and/or subsidiary companies).

**2.1.5** Customer does not have the right to make the Products available, under any title or in any way whatsoever, to any third party (third parties also include holding-, sister- and/or subsidiary companies).

**2.1.6** Reverse engineering or decompilation of the Products is not permitted by Customer, unless such is explicitly permitted by law.

**2.1.7** The user rights shall go into effect after Customer has made the required payments and fulfilled its other obligations.

### **2.2 Custom Work**

**2.2.1** All assignments consisting wholly or partially of custom work are billed on the basis of fixed price or subsequent calculation.

**2.2.2** Parties shall specify in writing the manner of development and the Top Bookings Product to be developed. Top Bookings will carry out the Top Bookings Product development activities with due care on the basis of information provided by Customer, for which information Customer ensures the accuracy, completeness and consistency.

**2.2.3** Top Bookings is authorized, but not obliged, to investigate the correctness, completeness and/or consistency of the data or specifications provided to Top Bookings and, if it is determined that there is any inaccuracy, incompleteness or inconsistency, to suspend activities until such time as Customer has remedied the deficiencies.

**2.2.4** To the extent Top Bookings undertakes custom work on the basis of data, designs, other instructions and/or requests/contributions made by or on behalf of Customer, Customer will be fully responsible for the content and Customer warrants that intellectual property rights, industrial property rights and/or other rights of third parties shall not be infringed.

**2.2.5** Intellectual property rights, industrial property rights, and other rights to custom work remain at all times with Top Bookings, as described in clause 7.1.

### **2.3 Additional Work**

**2.3.1** If, in the opinion of Top Bookings, a change request by Customer is in fact a request for additional work, Top Bookings will notify Customer thereof prior to performing additional work. Upon Customer's request, the notification will be followed by a specification of the price and additional conditions. Customer will decide as soon as possible whether to carry out the additional work.

**2.3.2** It will be assumed that Customer has agreed to the performance of additional work and the connected costs, if Customer has allowed additional work to take place without raising objections in writing prior to the commencement of additional work.

## **2.4 Back-ups**

**2.4.1** Customer will be responsible for activating the offered Back-up facilities. Under no circumstance shall Top Bookings be liable for these Back-ups for so far as but not limited to the complete or partial loss of these Back-ups, the failure to make Back-ups and/or errors in the Back-ups.

## **3. ASP-SERVICE**

### **3.1 ASP-service General**

**3.1.1** The ASP-service will only take place at a location approved by Top Bookings and on the equipment approved by Top Bookings.

**3.1.2** Top Bookings may, at its sole discretion, provide Customer with the possibility to make enhancements, additions and/or changes in the ASP-service. If this possibility is offered by Top Bookings, Customer will be responsible and liable for all enhancements, additions and/or other changes made and consequences that may flow forth there from.

**3.1.3** With regard to the access and use of the ASP-service, Customer has equipment and software directly or indirectly available which comply with the standards and/or requirements set by Top Bookings of which Customer has been notified directly or indirectly. Customer is required to maintain compliance with the conditions set out in this clause. If equipment and/or software do not comply with this clause, the obligations of Top Bookings to provide access to the ASP-service and the use of such may be postponed by Top Bookings.

**3.1.4** Customer will enable Top Bookings to verify if the standards and/or requirements as set out in clause 3.1.3 are met.

**3.1.5** If Customer, after the verification as set out in clause 3.1.4, still fails to meet the standards and/or requirements as set out in clause 3.1.3, Top Bookings will have the right to terminate or dissolve the agreement wholly or partially without prior notification and/or judicial intervention.

**3.1.6** Customer is required to follow instructions given by Top Bookings regarding the ASP-service.

**3.1.7** Top Bookings is entitled to view log files and the like for purposes of analyzing the use of the ASP-service. The results of such an analysis will not be made available to third parties (third parties do not include holding or subsidiary organizations of Top Bookings). This does not apply to figures and data with regard to the use of the ASP-service, which are not directly traceable to Customer's use.

**3.1.8** In the event Customer signals a malfunction, Customer must immediately report such to Top Bookings. After Customer has notified Top Bookings of the malfunction, Top Bookings will take the necessary steps, which will or could lead to a solution.

**3.1.9** The costs for resolving the malfunction are for the account of Customer if it appears that the malfunction is the result of Customer's act or failure to act in accordance with the agreement.

**3.1.10** Top Bookings is permitted at its own discretion to carry out maintenance. If Maintenance will lead to temporary problems with regard to gaining access to the ASP-service or the non-availability of the ASP-service Top Bookings will never be liable. To the extent possible Top Bookings shall inform Customer thereof in advance.

### **3.2 Responsibilities Top Bookings ASP-service**

**3.2.1** Top Bookings shall ensure the provision of the ASP-service Top Bookings will on a best effort basis and where influential by Top Bookings strive for an availability of the ASP-service of:

- a) 98% Monday through Friday between 06.00 and 24.00 hours (CET);
- b) 70% Monday through Friday between 24.00 and 06.00

- hours (CET);
- c) 70% Saturday through Sunday between 00.00 and 24.00 hours (CET).
- 3.2.2** The percentages mentioned in clause 3.2.1 are measured over a calendar year. The time for maintenance is not included.
- 3.2.3** Top Bookings does not guarantee, amongst others, that the telephone lines, the Internet and/or other networks will offer optimal access.
- 3.2.4** Top Bookings does not have any obligations with regard to availability, reliability and/or other performance requirements with regard to the telephone lines, the Internet and/or other networks and the resulting provisions.
- 3.2.5** Top Bookings will strive to provide all useful and necessary measures to ensure adequate operability and continuity of the ASP-service. Top Bookings makes use of the most recent and used virus protection programs in the market.
- 3.2.6** Top Bookings will strive, in accordance with the most current technology available, to provide adequate physical and logical security measures against unauthorized access by third parties to computer systems or computer programs used by Top Bookings and/or stored Process-data, in light of the provisions provided for under the agreement.
- 3.3 Browser**
- 3.3.1** Customer can access the ASP-service through a browser. The browsers for which the ASP-service has been optimized at the moment of entering into the agreement will be made known by Top Bookings.
- 3.3.2** Top Bookings is not obligated to maintain optimal access to the ASP-service through the browsers as mentioned in clause 3.3.1. Top Bookings is entitled, without any form of (damage)compensation being required, to make changes in the ASP-service which may influence the browser used by Customer and/or advised by Top Bookings.
- 3.3.3** In the event that the situation as described in clause 3.3.2 takes place, Top Bookings will use all reasonable endeavors to enable Customer to transition to a different browser. The costs incurred by Customer in doing so are for the account of Customer.
- 3.4 Use of Identification Codes**
- 3.4.1** Top Bookings will make Identification Codes solely available to Customer for the use of Products. Customer will use these Identification Codes with care. Customer will notify Top Bookings in the event of loss, theft and/or other forms of unauthorized use, in order to enable parties to take the proper actions.
- 3.4.2** Customer carries all responsibility, liability and costs related to the use of Identification Codes used and/or distributed by Customer. In no event will Top Bookings be liable for the misuse and/or unauthorized use of Identification Codes.
- 3.4.3** If there is a reasonable suspicion of misuse or unauthorized use of Identification Codes, Top Bookings can provide Customer with instructions, which must be carried out.
- 3.4.4** If it is determined that misuse has been made of Identification Codes or if Customer ignores instructions given as set out in clause 3.4.3, Customer will be immediately in default.
- 3.5 Changes in the ASP-service**
- 3.5.1** Top Bookings is entitled, after a reasonable notification period and without any compensation to Customer, to make adjustments to and/or changes in the ASP-service offered such as but not limited to:
- a) entrance procedures, such as:
- procedures regarding operational rules, and
  - security procedures.
- b) changes in a third party provider/supplier, location, hardware, software and other facilities necessary for the provision of the ASP-service.
- 3.5.2** If any changes made have a significant negative impact on Customer's business or the functionality of the ASP-service, Customer may, after providing relevant proof of the deterioration in writing, request in writing that Top Bookings provide an alternative. If Top Bookings then fails to provide an alternative, Customer will have the right to terminate the use of the ASP-service, without any damage compensation required by Top Bookings and/or third party or restitution of monies paid.
- 3.6 Data Traffic From Customer**
- 3.6.1** Top Bookings does not control or have any insight in the data traffic from and/or to Customer. Top Bookings is merely a passive conduit. Top Bookings does not give any warranties with regard to content of data such as but not limited to reliability and completeness.
- 3.6.2** Customer is responsible for the content of data traffic originating from Customer. Where applicable the Code of Conduct as set out in clause 3.9 will apply to Customer and its users.
- 3.6.3** Customer indemnifies and will keep Top Bookings free from any damage compensation regarding any claim, accusation or court procedure from a third party with regard to the (content of) the data traffic or the information originating from Customer.
- 3.6.4** Contrary to the terms of clause 7, Process-data will remain the (intellectual) property of Customer. Customer grants Top Bookings, without charge, a perpetual user and revision right of the Process-data. Process-data may only be distributed to a third party if not directly traceable to Customer.
- 3.6.5** Top Bookings will offer cooperation in transferring Process-data and/or other data to another application as requested by Customer. Top Bookings does not warrant that the available Process-data and/or other data during the agreement and/or after the agreement can be transferred to another application.
- 3.6.6** All costs connected to the transfer of Process-data and/or other data at the request of Customer to another application will be fully for the account of Customer.
- 3.7 Requirements Customer ASP-service**
- 3.7.1** In the event the ASP-service includes amongst others the hosting of a website for and/or on behalf of Customer, Customer must have a domain name provided and registered by an authorized organization in accordance with the Third Party General Conditions as maintained by this organization. Customer indemnifies and will keep Top Bookings free from any damage compensation regarding any claim, accusation or court procedure with regard to the domain name and the use thereof on behalf of and/or by Customer.
- 3.7.2** If, through use of the ASP-service, privacy information and/or other information/data are transported or commercial activities and/or other activities are undertaken, Customer will indemnify Top Bookings from all liability, costs or damage as a result of claims from a third party in the event privacy information and/or other information/data are transported or commercial activities and/or other activities are undertaken in violation of the relevant (privacy) laws and/or guidelines.
- 3.7.3** Customer will immediately inform Top Bookings in writing regarding changes that are relevant for the proper execution of the ASP-service.
- 3.7.4** Customer will follow the instructions given by Top Bookings regarding Fair Use. If Customer fails to follow the instructions given by Top Bookings, Top Bookings will be entitled through technical means to reduce the overload or in the case of a continuous overload to stop the provision of the ASP-service to Customer. Top Bookings will never be liable for damages of whatever nature that are incurred by Customer and/or third parties as a result of the measures undertaken by Top Bookings or by a third party on behalf of Top Bookings.
- 3.8 Privacy Information**
- 3.8.1** Customer is responsible for protecting (privacy) information, which is sent and/or processed by the equipment and/or programs of Top Bookings on behalf of Customer.
- 3.8.2** Customer will indemnify Top Bookings against any allegation as a result of a violation of any person's privacy.
- 3.8.3** Where Customer is authorized, Customer explicitly agrees with the registration of (privacy)information of users in the privacy registration of Top Bookings for administrative and management

purposes. The privacy registration will contain, amongst others, Identification Codes and Process-data and will only be accessible for Top Bookings. This information will not be provided to third parties unless Top Bookings is obligated to do so on the basis of a court order.

**3.8.4** Contrary to the terms of clause 3.8.1, Top Bookings will be responsible for the protection of privacy related information of which its use is necessary by Top Bookings for the proper performance of its obligations under the agreement and will indemnify Customer against allegations of private individuals for violation of their privacy as a result of an act or failure to act of Top Bookings.

### **3.9 Code of Conduct**

**3.9.1** Customer will make use of the ASP-service and/or other facilities offered in a responsible manner. It is prohibited to use the ASP-service and/or other facilities offered in a manner that will result in:

- a) damage in the system of Top Bookings and/or third parties; or
- b) interference with its use.

**3.9.2** Customer will ensure that such damage and/or interference is not the result of misconfiguration on Customer's part.

**3.9.3** It is not permitted to use the ASP-service and/or facilities offered for activities that are illegal and/or in violation of the agreement. The foregoing includes amongst others the following activities:

- a) violation of a third party's rights or facilitating the violation of a third party rights, such as but not limited to intellectual property rights and privacy rights;
- b) noncompliance to law and other applicable regulations;
- c) spamming (unrequested distribution (or creating the possibility for third parties) of advertisement and/or other messages);
- d) storage/distribution of (child) pornography;
- e) sexual intimidation, racial prejudice and/or the harassment of individuals in any other manner;
- f) distribution or making available to third parties in any other manner of obscene, insulting and tormenting material and/or other material of similar nature;
- g) threats;
- h) storage and distribution of viruses, worms and/or other destructive activities;
- i) unauthorized access (hacking) of accounts, systems and/or networks of third parties and/or Top Bookings and/or the performance or non-performance of any other act that makes hacking possible.

**3.9.4** Top Bookings reserves the right, at Top Bookings' sole discretion, if forced by law or a court order; and/or a third party informs Top Bookings and/or a suspicion exists that through the ASP-service a violation is made of the rights of a third party; there is a breach of the General Conditions Top Bookings and/or the agreement and the resulting obligations in question have not been met wholly or partially, to bar access to the ASP-service and/or other facilities offered, to remove the information in question and/or suspend its other obligations until Customer meets its obligations.

**3.9.5** Top Bookings and/or third parties will never be liable for damage of whatever nature suffered by Customer or third parties for measures taken by and/or on behalf of Top Bookings on the basis of clause 3.9.4. Payment obligations will remain in effect during the time period in which measures are undertaken by and/or on behalf of Top Bookings on the basis of clause 3.9.4.

**3.9.6** If the actions and/or failure to act of Customer justifies this and/or the actions and/or failure to act of Customer continues regardless of the measures under taken by Top Bookings, as set out in clause 3.9.4, Top Bookings will be entitled in accordance with clause 1.5.4 to terminate the agreement, without any damage compensation or restitution of monies paid being required.

## **4. THIRD PARTY PRODUCTS**

### **4.1 Third Party Products**

**4.1.1** Top Bookings has the right to deliver Third Party Products or make use of Third Party Products in fulfilling its obligations flowing forth from the agreement. Top Bookings is not responsible for Third Party Products, unless agreed upon otherwise in writing.

**4.1.2** If Top Bookings delivers Third Party Products to Customer, the Third Party General Conditions will be applicable to the agreement in addition to these General Conditions Top Bookings.

**4.1.3** Top Bookings will deliver rights for Third Party Products under the same conditions as indicated in the Third Party General Conditions.

**4.1.4** No maintenance, support or other services will be carried out by Top Bookings on Third Party Products, unless agreed upon otherwise in writing.

### **4.2 Third Party General Conditions**

**4.2.1** Third Party General Conditions that are declared applicable in these General Conditions Top Bookings shall, when available to Top Bookings, be provided on request. Third Party General Conditions will be delivered in the same format and language as received by Top Bookings.

**4.2.2** The General Conditions Top Bookings have priority over Third Party General Conditions unless indicated otherwise. When there is conflict between the General Conditions Top Bookings and Third Party General Conditions, Top Bookings has the right to declare the conflicting terms of the Third Party General Conditions inapplicable or applicable.

## **5. DELIVERY**

### **5.1 (Delivery) Dates**

**5.1.1** All (delivery) dates which may be named by and may be applicable to Top Bookings are determined to the best of Top Bookings' knowledge on the basis of information made known to Top Bookings and will be taken into consideration as much as possible.

**5.1.2** (Delivery) dates shall therefore not be considered to be absolute (delivery) dates within which must be delivered, but a time period within which Top Bookings shall strive with best efforts to deliver the agreed upon items. If it is not possible to keep to the (delivery) date, then Top Bookings and Customer will consult with each other to agree on a substitute (delivery) date.

**5.1.3** Exceeding a given (delivery) date which may be applicable never constitutes an attributable shortcoming by Top Bookings. Top Bookings does not accept liability under any circumstances in cases where the (delivery) date may be exceeded.

### **5.2 Reservations**

**5.2.1** Top Bookings shall commence execution of the agreement between Top Bookings and Customer only after a signed copy of the agreement drawn up by Top Bookings has been received by Top Bookings and/or having received timely payment of all amounts due in full. Should Top Bookings commence execution of the agreement prior to receiving a signed copy of the agreement and/or having received timely payment of all amounts due in full, Top Bookings reserves the right to suspend execution of the agreement pending receipt of a signed copy of the agreement and/or full payment of all amounts due.

**5.2.2** Customer's rights, such as but not limited to the access to the Products, are provided under the suspended condition that Customer timely pays the agreed compensations in full.

### **5.3 Replacement Performance**

**5.3.1** Top Bookings is permitted to deliver alternative Products than those Products ordered by Customer if the performance and operation of such alternative Products is essentially no different from the Products ordered.

**5.3.2** If the agreement is concluded with the objective of having

activities carried out by a particular individual, Top Bookings will be entitled to replace this person with another person with the same qualifications.

## 6. PRICES/PAYMENTS

### 6.1 Prices and Payments

- 6.1.1** All prices exclude VAT and other levies imposed by the government. The amounts invoiced to Customer will include applicable VAT and other levies possibly imposed by the government.
- 6.1.2** Top Bookings will invoice the amount, appropriately itemized, owed by Customer on a monthly basis to Customer and/or other term indicated in the agreement. Customer will pay all amounts indebted within 14 (fourteen) days of the invoice date. These payments will not be subject to compensation or deduction other than when permitted by law.
- 6.1.3** Should Customer fail to fulfill any payment obligation, Customer is in breach without any further notification of breach being required. Top Bookings reserves the right to charge all incurred costs to Customer, including judicial and extra-judicial expenses, with regard to the collection of debts from Customer. Extra-judicial collection costs amount to 15% of the debt, with a minimum of € 500 (five hundred euros). In any case Customer will be charged interest on a monthly basis, at the legal percentage rate increased with 3%, on all outstanding debts starting from the date of failure to pay.
- 6.1.4** Until full payment has been made, Top Bookings has the right to suspend all services and obligations to Customer. Customer's obligation to meet Customer's commitments remains unchanged.
- 6.1.5** Compensation for annual or periodic amounts are due as an advance at the moment of realization of the agreement between the parties and shall be billed to Customer, appropriately itemized, prior to each year or other period that the agreement between parties continues.
- 6.1.6** The indebted amount in clause 6.1.1 may be increased with order costs, postage costs and costs of third parties. An increase can also take place in the event that activities have to take place outside of Top Bookings' office. In the event that activities need to take place outside of Top Bookings' office, hourly rates, travel and waiting time compensations, actual travel and/or kilometer compensation, hotel expenses and any other costs connected to such services will be charged. The travel and waiting time compensation amounts to 50% of the current hourly rate. The means of transportation will be determined by Top Bookings. The foregoing is also applicable on services provided outside of The Netherlands.
- 6.1.7** Above mentioned paragraphs leave all the legal rights of Top Bookings unhindered, when Customer fails to meet Customer's commitments.
- 6.2 Price Changes**
- 6.2.1** The prices agreed to between Top Bookings and Customer are among other things based on the costs of salaries, social premiums, materials, and travel and accommodation costs, etc., as well as the rate of exchange between the currencies as applicable at the time of closing of the agreement. Top Bookings is authorized, in case of changes to one or more of the cost items and/or changes in the rate of exchange, to adjust the prices to these changes.
- 6.2.2** Top Bookings will offer Customer the possibility to become acquainted with possible changes in prices. If Customer does not agree with a price change, Customer will only be permitted to terminate the agreement from the date the change in price becomes applicable, if the total price increase during 1 (one) year exceeds the yearly inflation rate of the current year (or previous year for price increases announced for the next year) as published by the CBS (Dutch Bureau for Statistics) by 5%.

## 7. INTELLECTUAL PROPERTY RIGHTS

### 7.1 Rights of Customer and Top Bookings

- 7.1.1** Top Bookings has the exclusive right to further develop the Top Bookings Products and place them at the disposal of third parties by means of licenses.
- 7.1.2** Except where Third Party Products are concerned, all intellectual property rights, industrial property rights, and other rights resulting from all activities carried out by Top Bookings, regardless of where and when carried out and regardless of whether it concerns the delivery of an existing Product or Product to be developed in the future, reside with Top Bookings.
- 7.1.3** Customer acknowledges that all present and future intellectual property rights, industrial property rights, other rights and the registration and/or application of the foregoing rights and/or similar rights for the whole term thereof and all renewals or extensions thereof, now or at any time in the future worldwide at all times shall be and are hereby assigned or will be transferred to Top Bookings.
- 7.1.4** Customer is not permitted to remove or alter any designation concerning intellectual property rights, industrial property rights, other rights, trademarks and trade names from the Products, or to have such changes made by third parties.

### 7.2 Indemnification

- 7.2.1** Top Bookings shall protect Customer from any allegation to the effect that the Top Bookings Products violate a copyright valid in The Netherlands. Top Bookings shall pay the damages, expenses, and court costs that Customer is ordered to pay by the final court ruling, provided that Customer:
- notifies Top Bookings immediately, but no later than within 10 (ten) days after Customer becomes aware of the infringement or could have become aware of the infringement, in writing of the existence of the allegation of infringement; and
  - gives the case completely over to Top Bookings, including all negotiations and arrangements that might lead to a settlement.

In case of any such allegation or possible allegation, Top Bookings reserves the right to obtain a license or sub-license on the Top Bookings Product in question or to change or replace the Top Bookings Product in such a way that the Top Bookings Product will no longer infringe a copyright valid in The Netherlands. If, at Top Bookings' sole discretion, the foregoing remedies are not a reasonable option, Top Bookings has the right to take the delivered Top Bookings Product back against reimbursement of payments made for the Top Bookings Product in question, minus a reasonable compensation for having made use of the Top Bookings Product.

- 7.2.2** Top Bookings shall not indemnify Customer against an action in the event that:
- such is based on the fact that the Third Party Products provided to Customer violate an intellectual property right, industrial property right or other right valid in the Netherlands or elsewhere;
  - what has been provided by Customer is part of or is delivered in conjunction with a Product and this combination results in a violation of an intellectual property right, industrial property right, or other right valid in the Netherlands or elsewhere;
  - Customer has made a change in or to the Product.
- 7.2.3** If Top Bookings and Customer agree that the intellectual property rights, industrial property rights or any other rights of a Top Bookings Product, or a part thereof, will be transferred to Customer, Customer will indemnify Top Bookings against any action insofar as such is based on the fact that the Product, or a part thereof, violates an intellectual property right, industrial property right or any other right belonging to a third party.