



## GENERAL TERMS AND CONDITIONS

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These terms and conditions ("T&Cs") apply to the entire contents of this Website and to all dealings BETWEEN:

- (1) FASTPAYHOTELS SL (registered in Spain with company number B-57940066), whose registered office is at Carrer Pare Antoni Oliver 2 – 8, Palma de Mallorca 07014, Spain ("FPH") and
- (2) AGENT ("Distributor")

**WHEREAS** FPH is a booking agency acting on behalf of various independent Accommodation Providers and the Distributor wishes to make such Accommodation available to End Users.

In consideration of the mutual covenants and undertakings set out below THE PARTIES AGREE as follows:

## DEFINITIONS

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In this Agreement the following words and expressions shall have the meanings set out opposite them:

**Accommodation** means the hotel room(s), apartment(s), villa(s) and any other form of accommodation owned and/or managed by the Accommodation Provider;

**Accommodation Provider** means the person, organisation or company that owns and/or manages or supplies the Accommodation;

**Commission** means the percentage of the Fixed Price specified in the Annex to this Agreement (exclusive of VAT);

**Confidential Information** means all information of a confidential nature in any medium or format (written, oral, visual or electronic) together with copies, whether or not marked or described as confidential, received before or after the date of this Agreement. The following information is not "Confidential Information" for the purposes of this Agreement:

- (i) information which is in the public domain other than as a result of breach of this Agreement;
- (ii) information which the recipient party can demonstrate in writing was received, free of any obligation of confidence, from a third party which itself was not under any obligation of confidence in relation to that information;
- (iii) information which the recipient party can demonstrate in writing was developed or created independently by or on behalf of the recipient party and
- (iv) information which is required to be disclosed by law.

**End User** means an end-consumer who enters into a contract with the Accommodation Provider for the supply of the Accommodation through the Distributor or Sub Distributor;

**Force Majeure** means an event which is beyond the reasonable control of either party affecting its ability to perform any of its obligations under this Agreement, including (without limitation) the following: (i) act of God (including earthquake or other natural disaster), act of terrorism, war or warlike operations, civil unrest or riot; (ii) industrial action, fire, flood, explosion or malicious damage, or failure of plant or equipment (but only to the extent that any of these is itself caused by a Force Majeure Event or is otherwise beyond the reasonable control of the affected party),



**FPH Rate** means the rate for the Accommodation offered through the XML Link, which rate shall be non changeable, non refundable and to be paid at the of booking;

**Marks** means trademarks, trade names, logos, URLs and any other similar identifying marks or slogans of each party to this Agreement, whether or not registered;

**No Show** means where an End User with a confirmed booking fails to arrive at the Accommodation,

**Sub Distributor** means any other party authorised by the Distributor to use the XML Link via the Distributor's account;

**XML Link** means the XML to be supplied by FPH to the Distributor, which contains all relevant details regarding the Accommodation (e.g. pictures, availability, pricing etc.).

## 1. PROVISION OF SERVICES

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1.1 Distributor appoints FPH as a non-exclusive worldwide provider of Accommodation reservation services and FPH accepts such appointment subject to the terms and conditions set out in this Agreement.

1.2 Solely for the purposes of the Distributor making the Accommodation available to End Users, FPH grants Distributor and its Sub Distributors a non-transferable, non-exclusive, limited, revocable right and licence to the use the XML Link and access, display and use the Accommodation data, content and images ("**XML Content**").

1.3 FPH authorises Distributor to display and make available the FPH Rates to End Users through the Distributor website or call centre.

1.4 Notwithstanding the prepayment of the Accommodation by the End User, Distributor acknowledges that FPH acts as intermediary only and will not assume any hotelier obligations.

## 2. DISTRIBUTOR OBLIGATIONS

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Distributor shall

2.1 have the right to appoint Sub Distributors only on the condition that it allows access to the XML Link on the same terms as this Agreement. Distributor acknowledges that it is liable for the actions of Sub Distributors,

2.2 observe all reasonable directions and instructions given by FPH in relation to the sale of the Accommodation, keep FPH fully informed of its activities in this regard and provide FPH with such reports and information on request,

2.3 ensure that the End User is aware that i) their booking contract is with Distributor or Sub Distributor and ii) all FPH Rates are non-changeable and non-refundable,

2.4 purchase and maintain appropriate insurance policies to cover its obligations and liabilities to each End User in relation to each booking and to FPH under this Agreement and shall at all times comply

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fully with the terms of such insurance policies. FPH shall have the right to request the Distributor to provide copies of such insurance policies for inspection at any time,

2.5 inform FPH of the lead name of the End User on each booking of Accommodation, and

2.6 collect payment from End Users for bookings.

### **3. FPH OBLIGATIONS**

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FPH shall

3.1 issue booking confirmations on behalf of the Accommodation Provider for use by End Users,

3.2 ensure the XML Link and XML Content is available, subject to downtime and maintenance; and

3.3 provide the Distributor with sufficient relevant information (including booking conditions) to bring to the attention of End Users (via the XML Link or otherwise) when making a booking.

### **4. ACCESS TO XML LINK**

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4.1 FPH shall provide the Distributor with a unique access code to enable access to all relevant information regarding the Accommodation through the XML Link.

4.2 In the event of any misuse of the access code, FPH has the absolute right to withdraw access to the XML Link immediately and to cancel any outstanding bookings. Any cancellation costs will be paid by the Distributor. For avoidance of doubt, existing bookings shall not be affected.

4.3 The Distributor shall be responsible for obtaining and maintaining all computer hardware and software necessary for accessing and using the XML Link. The Distributor agrees not to misuse, alter, adapt, decompile, disassemble or reverse engineer any aspect of the XML Link or the XML Content. Further, the Distributor shall not be entitled to use the XML Content for any purpose except those set out in this Agreement.

4.4 FPH may at its sole discretion require the Distributor to end, withdraw or prevent access or distribution of the XML Link.

4.5 For the avoidance of doubt, the XML Link and all XML Content without limitation (whether modified or not) shall remain the intellectual property of FPH.

4.6 FPH shall use its reasonable commercial endeavours to ensure the data provided in the XML Link and the XML Content is accurate and current, however FPH excludes liability for any obvious descriptive errors (such as price), loading and technical errors that may from time to time arise. The data provided shall be considered 'as is' and FPH shall not warrant the accuracy or validity of any information and hereby excludes all liability permissible in law.

### **5. BOOKING PROCEDURES AND RESTRICTIONS**

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5.1 The Distributor and its End Users may request bookings via the XML Link in accordance with this Agreement and the relevant booking conditions. Distributor and any Sub Distributors shall ensure that the booking conditions supplied by the Accommodation Provider are accepted by End User.

5.2 Once a booking request has been confirmed with the Accommodation Provider, FPH will send a booking confirmation via the XML Link to Distributor for delivery to End User. FPH reserves the right to cancel or amend any booking within 24 hours without liability.

5.3 In the event of any special requests from End Users, FPH shall pass on to the Accommodation Provider but shall not be liable for any failure of the Accommodation Provider to honour any special request.

5.4 Distributor shall be responsible for ensuring that the End User is aware of any applicable nationality, visa, immigration or entry requirements or medical requirements before booking.

5.5 Amendments to bookings by End Users are not permitted on FPH Rates.

5.6 Cancellations to bookings by End Users shall not be refunded. Upon receipt of notification from the End User of any cancellation, Distributor shall immediately record the cancellation on the XML Link.

5.7 For the avoidance of doubt, no reimbursement will be made to End User in the event of No Show.

5.8 The Distributor shall have all necessary systems in place to prevent and detect fraudulent or unauthorised bookings and shall remain liable for any such bookings made via the XML Link. Further, Distributor shall be liable for any test or duplicate bookings or bookings made in error.

5.9 If a booking cannot be fulfilled as a direct result of a Force Majeure event affecting the Accommodation, FPH shall have no liability to the End User but will use best endeavors to arrange a refund from the Accommodation Provider.

5.10 For the purposes of this Agreement, any booking for the same date of arrival at the same hotel exceeding eight people travelling together, whether or not in the same room, will be considered as "Group booking".

In the event that a booking, in the sole opinion of FPH, can be considered as part of a Group booking, FPH, may, at its sole discretion:

- a) Cancel such Group booking. In this event, any cost associated to this cancellation shall be borne by the You; or alternatively
- b) Notify You the price increase and the new payment conditions of such booking as Group booking. You may i) accept the new conditions, in which case the Group booking shall be confirmed or otherwise ii) FPH will proceed to cancel such Group booking. In that event, any cost associated to this cancellation shall be borne by You

## **6. PAYMENT**

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6.1 In consideration for procuring bookings, FPH shall pay Distributor the Commission.

6.2 FPH shall provide the Accommodation to the Distributor through the XML Link at the FPH Rate. Distributor shall have discretion to mark up the FPH Rate for onwards sale to the End User. However, Distributor shall be solely responsible for fulfilling VAT payments in respect of any additional payment above the FPH Rate received from the End User.

6.3 Distributor shall collect booking monies from End Users. On the same day of booking, Distributor shall pay the full amount of the booking to FPH minus the Commission, in accordance with the payment

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procedure set out in the Annex to this Agreement. If Distributor does not make same day payment, FPH reserves the right to cancel the booking without liability.

6.4 Distributor shall be liable to FPH for any amount due to FPH in respect of each booking regardless of whether or not the Distributor collects this amount from the End User, or fraud or otherwise.

6.5 Where Distributor sells Accommodation to End Users in a package, no Commission shall be payable to Distributor and Distributor shall pay the full amount of the FPH Rate to FPH on the same day of booking in accordance with the payment provisions set out in the Annex to this Agreement.

## **7. COMPLAINTS**

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7.1 The Distributor shall immediately advise FPH of all complaints received from End Users relating to the Accommodation.

7.2 Distributor acknowledges that FPH is not responsible for the rating/category or quality of the Accommodation. End User complaints should be addressed to the Accommodation Provider or hotel.

7.3 FPH agrees to manage all complaints on behalf of the Distributor and liaise with the Accommodation Provider to safeguard the interests of the End User. FPH will use best endeavours to respond to complaints within 28 days of receipt.

7.4 FPH has been authorised by the Accommodation Provider to act on its behalf to try to resolve any complaints, however FPH shall have no personal liability to the Distributor or End User for complaints.

7.5 FPH may not deal with any complaint where the End User has failed to report such matters to the Accommodation Provider, FPH or the Distributor at the time of the events.

## **8. TRADEMARKS**

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8.1 Each Party acknowledges and agrees that all Marks used by the other respective Parties to this Agreement are the other Parties' exclusive property.

8.2 Each Party grants to the other Party a non-exclusive royalty-free licence for the term of this Agreement to use the other Party's Marks solely for the purpose of performing their obligations under this Agreement.

8.3 Each Party agrees that they shall not acquire any goodwill or rights to the other Party's Marks or brands.

8.4 Each Party will refrain from any action that would prejudice the other's Mark, including creating or using any likeness of a Mark or anything similar and bidding on similar domain names or key words.

## **9. LIABILITY**

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9.1 FPH's liability shall be limited to the amount paid to FPH for each booking.

9.2 FPH shall not be liable for any consequential or indirect loss or damage arising out of or in connection with this Agreement.

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9.3 This Agreement sets out the full extent of FPH's liabilities and obligations to the Distributor. All conditions, warranties or other terms in favour of the Distributor (or its End Users), which might otherwise be implied into this Agreement, are hereby expressly excluded.

9.4 Nothing in this Agreement shall operate so as to exclude or limit the liability of either Party for death or personal injury arising out of their own negligence, or for any other liability which cannot be excluded or limited by law.

## **10. TERM and TERMINATION**

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10.1 This Agreement shall commence on the Effective Date and shall continue indefinitely until terminated by either party giving at least one (1) month's prior written notice to the other party.

10.2 Either Party may terminate this Agreement immediately on notice in writing to the other Party if: (i) the other Party commits a material breach of any of its obligations under this Agreement which is incapable of remedy (ii) the other party fails to remedy, where it is capable of remedy any breach of its obligations under this Agreement within 14 days after receiving written notice to do so; (ii) the other Party ceases or threatens to cease to trade, becomes unable to pay its debts, admits its inability to pay its debts or becomes insolvent; (iii) the other party has a receiver or administrative receiver appointed, passes a resolution for winding up, becomes subject to an administrative order or enters into a voluntary arrangement with its creditors (iv) or anything equivalent to any of the events or circumstances stated in this clause occurs in any applicable jurisdiction.

10.3 The expiry or termination of this Agreement for whatever reason shall not affect any provision of this Agreement which is expressly or by implication intended to come into force or continue in force or or after such termination. Each party shall honour any bookings made before the date of termination and, for this purpose, each party shall continue to comply with all obligations in this Agreement which are reasonably necessary for the purpose of honouring such bookings.

## **11. DATA PROTECTION**

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11.1 Each party shall ensure that it has in place, or shall establish and maintain adequate security procedures and controls to prevent unintended disclosure of and unauthorised access to personal data or information of End Users.

11.2 Each party shall comply with all applicable Data Protection laws including the EU Data Protection Directive.

## **12. CONFIDENTIALITY**

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12.1 Each party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the disclosing party and disclosed or obtained as a result of the relationship of the parties under this Agreement and shall not use or disclose the same save for the purposes of the proper performance of this Agreement or with the prior written consent of the disclosing party.

12.2 Each party shall use all best endeavours to ensure that Confidential Information within its control is kept securely protected against theft or unauthorised access, and in any event shall maintain its

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security, integrity and confidentiality to at least the same standard as it applies to its own confidential information.

### **13 FORCE MAJEURE**

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13.1 If either party is affected by Force Majeure, it shall immediately inform the other party and shall not be liable to the other party and shall be released from its obligations under this Agreement to the extent that its ability to perform the obligations under this Agreement has been directly affected by the Force Majeure event.

13.2 If the impact of Force Majeure continues for a period of 30 consecutive days, either party may, by written notice, terminate this Agreement with immediate effect.

### **14. GENERAL**

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14.1 If any dispute arises between the parties under or in relation to this Agreement it shall first be referred to the sales directors of each party. If it cannot be resolved to the satisfaction of both parties within 15 working days it shall be referred to the chief executives/managing directors of each party for resolution.

14.2 Any notices sent under this Agreement must be in writing (which for these purposes includes e-mail) at the address set out in the Annex to this Agreement by personal delivery with confirmation of receipt, by mail or by electronic mail provided that there is evidence of receipt by the addressee.

14.3 Neither party may assign this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld.

14.4 If any provision of this Agreement is found by any court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be deemed not to form part of this Agreement, and the legality, validity or enforceability of the remainder of the provisions of this Agreement shall not be affected,.

14.5 This Agreement shall be governed by and construed in accordance with Spanish law and each party submits to the exclusive jurisdiction of the Courts of Spain for any dispute arising out of or related to this Agreement.