

Tour Manager Terms & Conditions

This Agreement is between Tour Manager (Tour Manager) of Southport Central 3, Level 3, Suite 30304 9 Lawson Street, Southport QLD 4215 Australia and the Supplier (You).

1. Operation

1.1 Tour Manager is a tour management system manager all your tour operations in a web based environment. Your tour products can also be distributed out to third party systems via the distribution network and agent consoles;

1.2 You are a tour operator and wish to use an online system (Tour Manager) to manager your Inventory, Rates and Bookings and distribute this information through Tour Manager's distribution;

1.3 You have agreed to use the Tour Manager system and in doing so grant Tour Manager the rights specified in this Agreement.

2. Definitions and Interpretation

2.1 In this Agreement, unless expressed or implied to the contrary:

Agreement	Means this Agreement.
Activation Date	means the date you received access to your Tour Manager console
Booking Form	Means the form created by the Tour Manager Technology that is installed on Your website and completed by Customers who book your Inventory online.
Commencement Date	Means the date that you accept these terms and conditions and complete the Plan.
Connected	Means distribution through the Tour Manager distribution network.
Customer	Means anyone who books tours using any third party websites that Tour Manager has distributed your inventory and rates to.
Fees	Means the Fees identified in clause 6 of this Agreement.
Force Majeure Event	Means a circumstance beyond the reasonable control of a Party which results in a Party being unable to perform its obligations under this Agreement and includes, but shall not be limited to, acts of God, storm, tempest, earthquakes, floods and any other natural disaster, acts of war, terrorism, riots and strikes.
GST Act	means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
GST Law	Means the GST Act and any associated legislation including, without limitation, delegated legislation.
Insolvency Event	Includes the filing of an application or petition or appointing a liquidator, receiver, administrator or entering into an arrangement seeking relief or protection under applicable bankruptcy laws.
Intellectual Property Rights	Means any rights identified in clause 7 of this Agreement.
Inventory	means the products or tours being supplied by You and includes, but is not limited to, tours, tickets, events and other tour types and shall contain, but is not limited to, your details, rates, rate plans or packages, cancellation policies, amendment policies, property and room features (including images) that You offer to the public through Tour Manager's Database.
Party	Means a Party to this Agreement and includes any reference to Parties.
Personal Information	Includes information about the parties to this Agreement and any information relating to any Customer.

Tour Manager	means Tour Manager
Tour Manager Database	Means the electronic storage facility which enables your Inventory to be distributed and published online to its distribution channels.
Tour Manager Technology	includes all Tour Manager products including any subsidiary companies of Tour Manager and any other company branded product from time to time.
Supplier	means You, the owner of a tour, ticket or event operation, or the person duly authorised on behalf of the owner, who supplies the Inventory and your is a reference to You. Means any website that is updated by the Tour Manager Technology including but not limited to, Bookeasy, agents and the Bookeasy Distribution network.
Third Party Websites	Means any website that is updated by the Tour Manager Technology including but not limited Bookeasy, agents and the Bookeasy Distribution network.

2.2 In this Agreement:-

(a) headings and underlining's are for convenience only and do not affect the interpretation of this Agreement;

(b) a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision;

(c) a word or expression in the singular includes the plural, and vice versa;

(d) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;

(e) a reference to a Statute includes an amendment or re-enactment to that legislation and includes subordinate legislation in force under it;

(f) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;

(g) a reference to a Party to this or any other Agreement includes that Party's successor and permitted assignee;

(h) a reference to an agreement other than this Agreement includes an undertaking, agreement or legally enforceable arrangement or understanding whether or not in writing;

(i) a reference to a clause includes a reference to a subclause;

(j) a reference to a person or words denoting a person includes any company, statutory corporation, partnership, joint venture, association, board, government or semi-government agency or authority and that person's successors and legal personal representative;

(k) The rights, obligations, representations, warranties and indemnities of the Parties are given, undertaken, made or offered (as the case may be) jointly and separately by each of the Parties under this Agreement and each of the rights, obligations, representations, warranties and indemnities of the Parties is to be read accordingly.

3. Term

3.1 Subject to clause 16.4, this Agreement commences on the Commencement Date and continues until expiry of the Plan or termination of this Agreement by either Party giving notice to the other pursuant to clause 11.

4. Validation and Provision of Inventory

4.1 After you have submitted Your Inventory to Tour Manager's Database, Tour Manager may contact you and make other enquiries to ensure the validity of Your Inventory. Subject to Tour Manager's satisfaction as to the validity of your details and Inventory, Tour Manager will activate Your Plan and publish Your Inventory on the Tour Manager Database.

4.2 If our assistance is required to install the Booking Form or to connect the Tour Manager Technology to third party websites selected by you, you agree to provide Tour Manager with your applicable usernames and passwords and authorise Tour Manager to install the Booking Form on Your behalf.

4.3 If you are unable to provide us with the details required under clause 4.2 within seven (7) days from entering into the Agreement, You grant us authority to contact your webmaster and any third party websites to obtain your username and password on Your behalf. Tour Manager will use the information provided by your webmaster for the sole purpose of installing the Booking Form on Your website.

5. Obligations of the Parties

5.1 You must, in addition to any other obligations expressed in this Agreement:

(a) ensure the accuracy of Your Inventory supplied to the Tour Manager Database so that Tour Manager can comply with its obligations under this Agreement. If such Inventory is delayed or not accurately provided by you, Tour Manager's corresponding obligations may be suspended until the Inventory is properly received;

(b) Pay to Tour Manager the Fees in clause 6 of this Agreement;

(c) Provide the best available rates for Inventory supplied to Tour Manager's Database;

(d) Have sole responsibility for ensuring that the Inventory provided to Tour Manager's Database:

(i) is not misleading or deceptive;

(ii) Does not infringe the Intellectual Property Rights of any person;

(iii) is not obscene, offensive, defamatory, personally offensive or in any way unsuitable to persons under the age of eighteen (18) years;

(iv) Does not comprise and cannot be used for any activity of an illegal, fraudulent or defamatory nature;

(v) Otherwise complies with all applicable laws.

(e) Honour all bookings made at the rates you provide in the Inventory to the Tour Manager Database;

(f) re-locate/secure the same standard of tour for a Customer at Your expense, where an error or fault occurs as a consequence of You uploading inaccurate Inventory to Tour Manager's Database that details

the availability of Inventory from Tour Manager's Database, when no such availability actually exists at the time of the Customer's booking;

(g) Have sole responsibility for ensuring that Customers comply with your normal payment terms and conditions;

(h) Only use the data or information provided to you by Tour Manager for the sole purpose of this Agreement;

(i) ensure that the password provided to You by Tour Manager shall remain confidential and shall not be published, or made available, to any third party;

(j) Regularly change Your Tour Manager password. The password should be changed each time that an employee with knowledge of the password ceases employment with your business;

(k) Grant Tour Manager permission to make changes to Your Inventory on Tour Manager's Database;

(l) Provide Tour Manager with and authorise Tour Manager to use any of your usernames and passwords to connect to any third party websites (selected by You) to update Your Inventory;

(m) pay the cost of any relocation or tour changes that you make for a Customer who has booked Your Inventory, which you agree will be solely at Your expense and not at the expense of Tour Manager;

(n) grant Tour Manager permission to contact Customers that have made bookings via Tour Manager Technology to confirm any cancellations or amendments, as may be necessary;

(o) conduct Your business from the location at which Your Inventory is published on Tour Manager's Database to be eligible to sign-up to the Tour Manager Plan.

(p) Check reservation lists on third party sites and Tour Manager frequently, as email notifications can fail and Tour Manager will not be liable for any losses incurred as a result of the Property not receiving emails.

5.2 Tour Manager must, in addition to any other obligations in this Agreement:

(a) distribute Your Inventory to Customers via Tour Manager's Database in accordance with the Inventory provided by You, subject to clause 16.10;

(b) grant You access to Tour Manager's Database for the express purpose of providing, amending and updating Your Inventory on Tour Manager's Database, subject to clauses 16.1 and 16.2;

(c) permit payment for the booking of the Your Inventory by a Customer directly to You at the date the booking is made, pursuant to Your normal payment terms and conditions (where provided by You), unless You have elected for Tour Manager to collect payment on Your behalf in accordance with clause 6 of this Agreement;

(d) provide the Customer with confirmation of its reservation once a booking has been made and provide the Customer with Your contact details for all post-booking requests, including cancellations and amendments of bookings.

6. Fees and Charges

6.1 You must pay Tour Manager:

(a) The monthly Fees as invoiced to you by Tour Manager.

6.2 Your Tour Manager Fees will be paid by Credit Card and you will provide Tour Manager with a valid credit card and authorization to deduct any fees from this credit card.

6.3 We will issue You with an invoice summary within five (5) working days from the end of the month in which the Customer departs Your accommodation, which requires you to login to Tour Manager to obtain our tax invoice for the Fees outlined in clause 6.1 which are payable by You.

6.5 You are required to notify Tour Manager of any discrepancies in Tour Manager's tax invoice within 7 days from the date of issue of the invoice summary. Failure to do so may result in the Fees charged being debited by the payment method nominated by you in clause 6.2.

6.6 You authorise Tour Manager to debit:

(a) The Fees charged under clause 6.1 within 14 days from the beginning of each month; and

6.8 Tour Manager has the right to suspend your access to use of the Tour Manager Technology for failure to make any payment due and payable by you under this Agreement. Suspended accounts will attract a reconnection fee of \$200 which shall be deducted from your bank account or credit card, based upon the payment method elected by you.

6.10 Any dispute between the parties as to the Fees charged will be determined in accordance with clause 13.

6.11 All Fees referred to in this Agreement are exclusive of GST.

6.12 Where you do not pay your invoice within the payment terms, your outstanding debt may be given to our nominated debt collector. You agree to pay all additional costs that are charged by the debt collector in addition to the invoiced amount.

7. Intellectual Property Rights

7.1 The parties acknowledge and agree that no rights or interests in their Intellectual Property Rights are granted by Tour Manager to You or by You to Tour Manager under this Agreement.

8. Warranties

8.1 In this Agreement, Tour Manager:

(a) does not warrant that the Tour Manager Technology will meet all of Your requirements;

(b) does not warrant that the access to Tour Manager's Database or its use will be uninterrupted, virus-free, error free, continuous or fault-free, as the operation of Tour Manager's Database may be interfered with by numerous factors beyond Tour Manager's control;

(c) Except as expressly provided by this Agreement or by law, Tour Manager makes no further warranty of any kind, whether express or implied.

8.2 In this Agreement, You:

(a) represent and warrant that You are the owner or an agent appointed by the owner who is legally authorised to enter into this Agreement;

(b) represent and warrant that at all times the information provided by You is correct and complies with the Advertising Codes of the Media Council of Australia, the Trade Practices Act 1974 and all other applicable laws.

9. Disclaimer and limitation of liability

9.1 Tour Manager, including its employees, agents and contractors, denies and shall not be held liable to any person, including You, whether a user of Tour Manager's Database or not, for:

(a) any error or omission caused, in whole or in part, as a consequence of Your use of Tour Manager's Database. This limitation extends to the consequences of any actions taken or omitted to be taken by You in reliance upon all or any part of the content provided to Tour Manager's Database; or

(b) any loss (including legal costs and expenses) incurred by You as a result, either directly or indirectly, of any cancellations by Customers of Your Inventory. You will be responsible for imposing and recovering any cancellation fees from the Customer in accordance with Your usual payment terms and conditions.

9.2 Without limiting the foregoing, Tour Manager will not be liable if:

(a) You experience any interference with Your enjoyment of Tour Manager Technology resulting from any changes or modifications made or steps taken by any third parties to their software, website or booking systems;

(b) the functions contained in the Tour Manager Technology and Tour Manager's Database do not meet Your requirements;

(c) third party software, website or booking system providers prohibit You (now or at any point in the future and whether by contract or otherwise) to use the Tour Manager Technology, together with such third party's software, site or system; or

(d) due to different server and download speeds beyond Tour Manager's control, You experience delays in updating Your Inventory in the Tour Manager Technology or on any third party websites.

9.3 Tour Manager's liability for breach of any implied warranty or condition, which is not otherwise excluded by this Agreement, is limited to one or more of the following:

(a) the cost of replacement of Your access to Tour Manager's Database; and/or

(b) the cost of repair of Your access to Tour Manager's Database; and/or

(c) reimbursement of the Fees paid by You in connection with any such breach.

(d) the total liability will not exceed more than one months Fees identified in clause 6 of this Agreement.

10. Indemnity

10.1 You expressly acknowledge that Tour Manager does not exert control over Your use of Tour Manager's Database and You will at all times indemnify and keep Tour Manager, its officers, employees and agents, indemnified from and against all loss, damage, cost, charge, or expense suffered by Tour Manager arising from any such claim, demand, suit, action or proceeding by any person, where such loss or liability arose out of or in connection with:

(a) Your use of Tour Manager's Database;

(b) any breach by You of Your obligations under this Agreement; and

(c) any claims arising from Your Inventory provided to Tour Manager's Database.

10.2 Tour Manager will indemnify You for any loss or damage to the extent permitted by clause 9.3.

11. Termination

11.1 Subject to this clause 11 and clause 16.4, this Agreement may be terminated by either Party providing the other Party with thirty (30) days notice in writing; or

11.2 Tour Manager may suspend Your access to the Tour Manager Technology and Tour Manager's Database, or terminate the Agreement at any time, by providing written notice to You, including by email, if:

(a) You commit any breach of any of the provisions of this Agreement or perform any wrongful or negligent act or do anything as a result of which Tour Manager may incur liability to any person; or

(b) You are in jeopardy of suffering an Insolvency Event.

11.3 You may terminate this Agreement at any time by providing written notice to Tour Manager if:

(a) Tour Manager commits a material breach of any of the terms of this Agreement; or

(b) Tour Manager is in jeopardy of suffering an Insolvency Event.

11.4 Your obligations in respect of bookings and in particular, the payment of any Fees to Tour Manager in accordance with clause 6, incurred prior to any termination of this Agreement, shall survive termination.

11.5 If Tour Manager suspends Your access to the Tour Manager Technology and Tour Manager's Database, or terminates the Agreement:

(a) Your Booking Form will become inactive (so that Customers cannot book accommodation);

(b) the affiliates will not be able to provide a Booking Form to Customers;

(c) You will not be able to use Tour Manager's distribution manager to connect to third party sites (where applicable) and You will be solely responsible for and should immediately change Your email address so that You can receive emails direct from those third party websites; and

(d) You will solely responsible for losses incurred as a result of not receiving emails from third party websites; and

11.7 If payment of all Fees under this clause 11 are not made by You within thirty (30) days from the date of termination of this Agreement, You will be liable to Tour Manager for interest on any outstanding Fees at a rate of 15% per annum, calculated on a daily basis and compounded monthly in arrears, plus any costs incurred by Tour Manager in recovering those Fees.

12. Privacy

12.1 The Parties agree to take all reasonable steps to ensure the integrity and confidentiality of the Personal Information obtained pursuant to this Agreement. In particular, the Parties must:

- (a) observe the National Privacy Principles under the Privacy Act 1988 (Cth); and
- (b) not disclose, use or hold any Personal Information in breach of the Privacy Act 1988 (Cth).

13. Dispute Resolution

13.1 In the event that a dispute shall arise between the Parties, then the Parties agree to use their best endeavours to resolve such dispute within a period of 14 days from the time either Party gives to the other notice in writing of the dispute.

13.2. In the event such dispute shall arise and has not been resolved in accordance with clause 13.1 then, provided that such dispute arises out of or relates to the Agreement or the breach, termination, validity or subject-matter thereof, the parties agree to use their best endeavours to settle the dispute by mediation by a Mediator appointed by the Queensland Law Society.

14. Variations

14.1 Tour Manager may at any time and without Your consent, vary this Agreement, subject to clause 14.2. Any such variations shall be published on Tour Manager.com.au at <http://www.Tour Manager.com/terms>

14.2 No variations to this Agreement will be made in relation to the Fees payable in clause 6.1(a) without the Parties having mutually agreed in writing.

15. Force Majeure

15.1 Tour Manager is not liable for:

- (a) any delay in providing or implementing the Inventory on Tour Manager's Database;
- (b) any delay in correcting any fault in the access to Tour Manager's Database;
- (c) any other delay or default in performance under this Agreement

if it is caused solely by any event reasonably beyond Tour Manager's control, including but not limited to a Force Majeure Event.

17. Governing Law and Jurisdiction

17.1 This Agreement is governed by and is to be construed in accordance with the laws of Queensland. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

19. Tour Manager Support

19.1 Support and training for Tour Manager's Database and the Tour Manager Technology is offered in English only. Please refer to <http://www.TourManager.com/contact-us/> for Tour Manager's current support contact details and business hours.

© 2013 Tour Manager Channel Manager - All Rights Reserved
email: support@Tour Manager.com.au **phone:** +61 7 56682540