

# General Terms and Conditions of Cockpit Marketplace AG in business operations with Agencies as of September 2023

These General Terms and Conditions shall apply to the business operations of Nezasa AG's customers in the following referred as Agency

with

Cockpit Marketplace AG and the MARKETPLACE' sub-contractors  
in the following referred to as MARKETPLACE

## Introduction

The principles of business cooperation are laid down in **Part A**.

The special regulations laid down in **Part B** shall apply to the **processing of booking orders for carriage within scheduled air traffic**.

The regulations laid down in **Part C** shall additionally apply to the **processing of booking orders for accommodation, transfers and activities**.

For the **agency of rental cars**, the regulations in **Part D** shall apply.

For the **agency of local tours**, the regulations in **Part E** shall apply.

## Part A – Principles of business cooperation

### 1. Definitions

#### 1.1. MARKETPLACE sub-contractors

MARKETPLACE sub-contractors are the companies associated with MARKETPLACE that support MARKETPLACE as sub-contractors in the interior relationship when fulfilling its contracts.

#### 1.2. MARKETPLACE

MARKETPLACE always acts as an agent and provides one or several travel services to the agency

#### 1.3. IATA / BSP

IATA is the International Air Transport Association. BSP is the Billing and Settlement Plan of IATA.

#### 1.4. Customer

Customer is the Agency's client, i.e. all natural persons or legal entities that intend to buy a travel package from the agency and commissions the Agency for this purpose to cause a corresponding booking.

#### 1.5. Service recipient

Service recipient is that person in whose name the booking is made.

#### 1.6. Service provider

Service provider is that natural person or legal entity that offers a travel service or linked travel arrangements within the contractual chain and renders these to the service recipient. Service providers are, in particular, airlines, other carriers, hotels, car rental companies and providers of other travel services.

#### 1.7. Service relationship

The service relationship is the legal relationship existing between the service recipient and the service provider.

## **2. General provisions**

### **2.1. Scope of application**

- 2.1.1. The following General Terms and Conditions (GTC) shall apply to the business relationship between MARKETPLACE - Cockpit Travel Service AG and its sub-contractors, on the one hand and the Agency that is an entrepreneur. MARKETPLACE hereby does not recognize any contrary or deviating conditions of the Agency, unless MARKETPLACE has explicitly agreed in writing to their application.
- 2.1.2. Individual stipulations agreed upon with the Agency in an individual case (including ancillary agreements, supplements and amendments) shall always have precedence over these GTC. Unless otherwise agreed upon, a written agreement and/or a written confirmation by MARKETPLACE is required for such stipulations.
- 2.1.3. The Agency Framework Agreement and/or individual agreement concluded between MARKETPLACE and the Agency are supplemented by these GTC. If individual provisions therein deviate from these GTC, they shall take precedence over the provisions of these GTC.

### **2.2. Subject matter of the contract**

- 2.2.1. MARKETPLACE fulfills individual business management agreements on the basis of the Agency Framework Agreement by carrying out the precise booking orders received from the Agency for the contractual services as laid down in these GTC.
- 2.2.2. For this purpose, MARKETPLACE provides information on currently available travel services and their respective prices as well as on the procedures required for booking and reservation, including by electronic means.
- 2.2.3. The agreement between the service recipient and the service provider comes into existence upon the booking confirmation as acceptance of the contract. The GTC of the respective service provider used shall apply to this service relationship.
- 2.2.4. 2.2.4 The Agency acts as a tour operator as per the definition of EU package travel directive. (DIRECTIVE (EU) 2015/2302 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL). The Agency shall inform the service recipient to this end and make his GTC accessible.
- 2.2.5. No contractual relationship is established between MARKETPLACE and the Agency's customer.

### **2.3. Services outside the scope of the GTC**

- 2.3.1. The service relationship comes into existence between the person making the booking as the service recipient or for the service recipient and the respective service provider, taking into account the service provider's terms and conditions agreed for this purpose.
- 2.3.2. MARKETPLACE does not act as a tour operator, but as an agent, as MARKETPLACE only provides as an agent individual – if necessary also connected – travel services resulting from booking orders of the Agency, but does not arrange them for the service recipient.
- 2.3.3. It is the Agency's responsibility to inform its customers about country-specific regulations and entry requirements, without MARKETPLACE assuming any obligations in this regard.
- 2.4. Ancillary services are services additionally rendered by MARKETPLACE in connection with the booking order; they are deemed to be ancillary services to the main service, i.e. they shall be treated in the same way as the main service in matters pertaining to turnover tax.

### 3. Booking process and conclusion of contract

- 3.1. For the booking and reservation process, the Agency shall use Nezasa's SaaS Platform Tripbuilder for this purpose.
- 3.2. The available travel services, the current prices and conditions of the travel services as well as the fees charged by MARKETPLACE will be shown to the Agency in the Tripbuilder application.
- 3.3. The Agency is obliged to transmit all information required for the booking in a complete and unambiguous form. The Agency may only pass on the booking order of a customer to be processed by MARKETPLACE if the Agency itself has examined the following requirements:
  - I. The Agency has itself examined with due care that the requirements for accepting the order have been fulfilled;
  - II. The Agency has examined the agreed payment settlement, including the agreed assignment. An assignment in the meaning of this item 3.3. is the contractual transfer of the Agency's claims vis-à-vis its customer to MARKETPLACE in order to safeguard MARKETPLACE's payment claims towards the Agency;
  - III. The Agency has examined that the payment in favor of MARKETPLACE is ensured. The Agency must always examine whether the booking confirmations are correct and complete.
- 3.4. The Agency must comply with the special duties of care regarding the credit card agreement, as amended, especially if the customer is not known personally. The Agency shall take reasonable precautions to ensure that payment is guaranteed and can be processed properly, as it does for other payment methods. The Agency is obliged both to inform MARKETPLACE immediately in the event of irregularities and apparent problems, and to submit all necessary records and documents in connection with these irregularities and apparent problems without delay.
- 3.5. The Agency shall be liable towards MARKETPLACE for the fulfillment of the contract between the Agency and the service recipient and thus for payment of the agreed fees.
- 3.6. All service and participation conditions stated in the offers and booking confirmations, in particular, restrictions regarding the group of participants (e.g. age restrictions), country-specific features and required proof of a certain customer status must be recognized by the Agency as binding and complied with. The Agency must inform the service recipient of this. Documented certificates of entitlement, such as flight tickets, vouchers, etc. are only valid for the person for whom they are issued.

### 4. Reservations

- 4.1. The Agency is entitled to effect the reservation of the services booked by its customers.
- 4.2. The reservation shall be binding for the Agency once MARKETPLACE or the MARKETPLACE sub-contractor employed for this purpose have confirmed the reservation. The reservation becomes binding as soon as the Agency forwards it to MARKETPLACE for processing and MARKETPLACE has successfully completed and confirmed the reservation. The service can only be requested after full payment has been made and it can only be used at the times shown and contractually agreed upon.
- 4.3. If prices are stated in the reservation confirmation, these shall be binding for the final booking. The prices indicated by the Agency in the reservation are not binding, unless they have been confirmed by MARKETPLACE.
- 4.4. The Agency is obliged to examine whether the reservation is correct and complete and must comply with the reservation deadline.
- 4.5. If the service is not used or cancelled in a permissible manner, the GTC of the respective service provider shall apply to this and to the resulting legal consequences. The Agency must indemnify MARKETPLACE and reimburse MARKETPLACE for the amount that MARKETPLACE has advanced to the service provider in reliance on the validity of the booking. This usually involves rebooking or

cancellation fees which can vary depending on the service provider, service type, and time of service.

## **5. Complaints, rebooking and cancellation**

- 5.1. Any complaints by the service recipient must be asserted vis-à-vis the service provider insofar as this refers to the service relationship. If the Agency has received complaints or recourse claims by the service recipient and the Agency is unable to reach final settlement itself, the Agency must immediately forward the transaction to MARKETPLACE. MARKETPLACE is prepared, but not obliged, to forward the complaints and recourse claims received to the service provider's competent office.
- 5.2. In the event of rebooking or cancellation of bookings, the Agency shall observe the same standards of care as for the booking itself. In addition, it must observe a reasonable handling time for the processing of rebooking and cancellation requests if rebooking or cancellation conditions for different periods provide for different refunds or fees in order to keep the rebooking and cancellation fees as low as possible. The fees and prices charged by MARKETPLACE for the booking are non-refundable. MARKETPLACE will charge the Agency a fee for processing the rebooking or cancellation, which is stated for the specific case.
- 5.3. In the event that MARKETPLACE was charged by the service provider for the amount of the service fees without having received the fee to be paid by the Agency, MARKETPLACE is entitled to offset the existing payment or compensation claim against claims of the Agency, if any. If the customer has not paid the fee owed to the Agency, MARKETPLACE shall maintain its payment claim for the services settled vis-à-vis the Agency. MARKETPLACE shall be entitled to a right of retention until final settlement of the transactions referred to in items 5.1 and 5.2.

## **6. Problems in the agency service**

- 6.1. Any and all claims and obligations resulting from the service relationship shall exist directly and exclusively between the service provider and the service recipient. The Agency must inform the customer to this end.
- 6.2. The Agency must notify MARKETPLACE in writing and without delay of any Problems in the agency service. In the case of a defect, the Agency must set MARKETPLACE a reasonable deadline to remedy the defect.
- 6.3. In the case of Problems in the agency service, the service recipient shall contact the Agency as the primary service agent. MARKETPLACE shall only accept notices of Problems the Agency has received from the service recipient, if these refer to Problems in MARKETPLACE's agency services or if MARKETPLACE has expressly declared vis-à-vis the Agency in writing in an individual case that it is prepared to forward the service recipient's notice of Problems arising from the service relationship to the service provider. In all cases, the service relationship between the service recipient and the service provider remains unaffected; in particular, MARKETPLACE does not assume any obligations arising from the service relationship.

## **7. Delivery of the service documents and dispatch of invoice**

- 7.1. The Agency may only hand over the travel documents to the service recipient if the contractually agreed fee has been paid in full and forwarded to the recipient of the payment. The Agency shall be liable vis-à-vis MARKETPLACE for the full invoice amount if it fails to fulfill this obligation.
- 7.2. In the event that an original service voucher is lost, that is the originally issued and only document which entitles the service recipient to use the respective travel service, MARKETPLACE or the service provider must be notified of the loss of such entitlement document without delay. In this respect, the procedures and formal requirements regarding the lost ticket procedure specified by the service provider shall be complied with.
- 7.3. The dispatch of invoices between MARKETPLACE and the Agency shall be done by e-mail.

## **8. Handling of payments**

- 8.1. The Agency is liable to pay MARKETPLACE on the basis of the orders placed by the Agency. Upon

issuing the invoice, MARKETPLACE confirms that it has fulfilled the order placed with it.

- 8.2. Invoices shall be due and payable upon receipt, unless agreed otherwise. Insofar as the Agency forwards this invoice to its customers, it assigns the claim from the invoice to MARKETPLACE on account of performance. MARKETPLACE accepts the assignment of this claim beforehand under the proviso that MARKETPLACE is entitled to disclose this assignment of claim at all times, and the Agency is entitled to collect the claim on behalf of MARKETPLACE, unless MARKETPLACE has already asserted said claim. The Agency shall be obliged to pass on the collected third-party funds to MARKETPLACE.
- 8.3. The Agency may not reverse the amount collected by MARKETPLACE on its own authority. The Agency shall however be entitled to instruct its credit institution to refrain from honoring direct debits before the due date. MARKETPLACE and the Agency agree to a permanent reduction of the prenotification for a pending direct debit to one day.
- 8.4. Insofar as the Agency has a fee claim against MARKETPLACE resulting from a contractual relationship existing between MARKETPLACE and the Agency (e.g. the Agency Agreement), the Agency shall be entitled to offset the outpayment amount identified for MARKETPLACE against its fee claim, if the current account kept for the Agency does not show any arrears.
- 8.5. In order to fulfill the Agency's fee claim, MARKETPLACE can either arrange for an orderly, verifiable credit note, or the Agency can issue a corresponding orderly, verifiable invoice.

## 9. Special duties of the Agency

- 9.1. With respect to the fulfillment of the orders for its customers, the Agency undertakes to act with the care of a prudent businessperson. In this respect, the Agency shall comply with the following requirements:
  - transferring the payments collected on a fiduciary basis to the entitled party, and/or making them available for debit;
  - observing the requirements for booking and payment transactions as well as those for the handling of failures, complaints, rebooking and cancellations, examining confirmations in the processing of bookings and using all verification options made available;
  - prohibiting unauthorized parties, in particular, other agencies, from gaining access to booking procedures and protecting login data;
  - clarifying any obscurities in the booking and payment transactions immediately through MARKETPLACE;
  - observing the statutory regulations of data protection and the regulations regarding secrecy during the transfer of data and information, and guaranteeing their observance;
  - informing the service recipients that the service provider's GTC apply for the contract with the service provider, unless a separate agreement has been made between them. These GTC must be made available to the service recipient. In the event of any uncertainties, the Agency must provide for the required clarification via MARKETPLACE and/or the service provider.
- 9.2. Any and all information, prices, price lists, data, bookings and other internal contractual information which MARKETPLACE makes available to the Agency and which have not been officially published are deemed to be confidential information. It is explicitly prohibited to pass them on to other agencies, service providers or competitors. Price lists, information about the service contents and information about the service provider may only be used for customer advice, whereas the customer may only be informed about the prices including the respective extra charges on the booking. This obligation shall not apply to information of which the Agency can prove that:
  - it was publicly known at the time of disclosure and this circumstance is not due to any misconduct on the part of the Agency;
  - it has come to the Agency's knowledge through means other than MARKETPLACE or MARKETPLACE sub- contractors without any direct or indirect breach of an obligation of confidentiality towards MARKETPLACE, and a right to disclose this information was given;
  - the Agency is obliged to disclose such information due to a statutory provision or official order, provided that it has previously informed MARKETPLACE in writing of the intended disclosure and has taken the legally required and reasonable precautions to prevent the disclosure or, if this is not possible, to keep the extent of disclosure as small as possible.
- 9.3. The Agency has a special obligation to examine the booking orders placed with it by its customers, which results on the one hand from the proximity to the customer, and on the other hand from knowing the booking circumstances. In this respect, the Agency shall examine unusual events, in particular in the mail order procedure or in the Internet booking system and to take corresponding measures to

defend MARKETPLACE against damage, if required. If the Agency breaches this duty in an assignable and culpable manner, it shall be liable vis-à-vis MARKETPLACE for compensation of any damage that might result. In the event of actual indications substantiating the suspicion that fraud, attempt at fraud or another kind of damaging behavior is involved in the booking, the Agency must refuse the order. Furthermore, the Agency must ensure itself at all times that its customers possess legal capacity. In case of non-observance of the abovementioned examination obligation, MARKETPLACE's payment claim to the agreed service fee vis-à-vis the Agency shall remain in existence.

## **10. Liability**

10.1. The Agency shall be liable in the following cases:

- for the improper handling of the tasks, duties of clarification and care it is obliged to observe in the booking process and payment transactions, as well as for errors arising from the fact that the Agency violates its duties of cooperation, examination and care in the processing of bookings, or if it fails to comply with these duties in a timely and proactive manner;
- for any disadvantages arising for MARKETPLACE and, if applicable, its contractual partners (e.g. service providers), which are due to the fact that the Agency carries out the booking order without the examinations prescribed in item 9.3. or despite indications that give rise to suspicion that a booking involves an attempt at fraud or other damaging behavior;
- for damages to MARKETPLACE resulting from the breach of a duty to render a main or ancillary performance on the part of the Agency or its vicarious agents.

10.2. MARKETPLACE is liable for the orderly processing of the agency, booking or reservation services on the basis of the data provided and within the framework of provisions applicable for these services.

10.3. MARKETPLACE shall only be liable in cases of intent and gross negligence and for damages resulting from injury to life, body or health in accordance with the statutory regulations. In the case of slight negligence, MARKETPLACE is only liable for the breach of an essential contractual obligation (cardinal obligation), the fulfillment of which is essential for the orderly execution of the contract and on the compliance of which the Agency may regularly rely. In this case, liability shall be limited to the amount of the foreseeable damage, the occurrence of which must typically be expected. Otherwise, MARKETPLACE is not liable in the event of slight negligence. The above provisions shall also apply in favor of MARKETPLACE's legal representatives and vicarious agents. Liability based on mandatory statutory regulations remains unaffected by the above provisions.

## **11. Amendment of these GTC**

11.1. MARKETPLACE has the right to update these GTC due to changes in the law, in jurisdiction or due to economic circumstances or for similar objective reasons.

11.2. In this case, MARKETPLACE shall notify the Agency of the new GTC in the written form (e.g. e-mail or fax) in good time, but at least 6 (six) weeks before they come into force.

## **12. Final provisions**

12.1. If one or more of the provisions are invalid, this shall not affect the validity of the rest of these GTC. In the event a regulatory gap exists or comes into being because a provision is invalid or void, which is not remedied by a statutory regulation, MARKETPLACE and the Agency undertake to supplement the lacking provision with a contractual regulation that reflects the concordant will of the parties.

12.2. Swiss law shall apply, excluding international conflict of law rules. Place of performance and jurisdiction for all disputes in connection with this contractual relationship shall be Zurich. This shall also apply if the Agency has its headquarters in the EU or in a non-EU state.

# **Part B – Processing of booking orders for carriage within scheduled air traffic**

## **1. Principles of processing of booking orders in air traffic**

1.1. The regulations laid down in Part A shall additionally apply to carriage in air traffic, unless otherwise specified in the following.

- 1.2. The Agency undertakes to use for the booking, reservation, rebooking and cancellation process the systems approved by IATA and made available online by MARKETPLACE, complying with the applicable contractual regulations. The booking data must correspond to the subject matter of the service which has been agreed with the Agency's customer. Upon receipt of the booking order transferred to MARKETPLACE, the Agency places an order with MARKETPLACE to issue the flight ticket. MARKETPLACE carries out the booking order which includes a binding reservation of the carriage service ordered and the issue of the flight documents in electronic form. The contract for carriage shall become effective with the content indicated in the booking confirmation which can be combined with the invoice.
- 1.3. In general, the Agency is not the agent of the carriage service but acts within an agreement for management of business for its customers, involving MARKETPLACE as an IATA-licensed consolidator for the technical processing and booking of the flight ticket. In this respect, the Agency is responsible for managing the booking order.
- 1.4. The Agency shall transmit to MARKETPLACE the booking orders placed with it by its customers. As long as MARKETPLACE has not received these, MARKETPLACE is not obliged to performance. MARKETPLACE forwards the customer's declaration to the service provider as a messenger of the declaration for the ordering or reservation of the carriage service and the issue of the flight tickets.
- 1.5. The Agency is informed about the fact that MARKETPLACE must always pay the fee for the booked flight ticket to the BSP, which IATA uses for billing and collection/debit in the interest of the respective airline booked, regardless of whether it in turn receives payment from its customer.

## **2. IBE**

- 2.1. The Agency uses Nezasa's SaaS Platform "Tripbuilder", where MARKETPLACE makes available the flight offers. The Agency shall, in particular, be obliged to examine all incoming bookings as to their correctness and completeness, and to report to MARKETPLACE any possible errors immediately.
- 2.2. Bookings which are transferred to MARKETPLACE via Nezasa's Tripbuilder are deemed to be a binding order to issue the corresponding flight ticket. It is prohibited to cancel bookings only for the purpose of newly booking them into own systems to avoid fare restrictions of air companies and/or use the IBE only for information on or representation of fares without carrying out a precise booking transaction.

## **3. Fees of the Agency**

- 3.1. If, in individual cases, the Agency acts on behalf of service providers – as a subagent of carriage services – the Agency shall be entitled to a fee, subject to the special provisions of the MARKETPLACE Fee Regulations.
- 3.2. The prices confirmed by MARKETPLACE are binding, unless other regulations apply. The current daily prices valid at the time of ticket issuance shall apply to the ancillary costs, such as taxes, security surcharge and/or fuel surcharge.

## **4. Reservation and cancellation**

- 4.1. Any cancellation of the flight booking is only permitted if the relevant conditions and deadlines of the service provider and the procedure provided for this purpose are complied with. Cancellation fees will be determined and charged by the service provider in accordance with its GTC. MARKETPLACE has no influence on the amount of the cancellation fees to be charged. Entitlement documents issued must be returned in the original, unless they were issued electronically. If the original documents are not returned and MARKETPLACE therefore is obliged to pay the airfare in whole or in part, the Agency will be invoiced for the full service fee which will be paid to MARKETPLACE. The Agency is obliged to pay.
- 4.2. The Agency must pay for the airfare within the deadline set by MARKETPLACE. If the Agency does not pay on time, MARKETPLACE is entitled to cancel the booking. In that case, it is the duty of the Agency to inform its customer that the flight has been cancelled. Further, the Agency must pay any additional or cancellation costs both towards the customer and towards MARKETPLACE.

## **5. Special duties of the Agency and liability**

- 5.1. The Agency is obliged:

- 5.1.1. to comply with all relevant laws, regulations and Codes of Practice, including the Package Travel, Package Holidays and Package Tours Regulations and any amendment or re-enactment of the same; the Consumer Protection from Unfair Trading Regulations and the Data Protection Act, insofar as they affect the Agency activities.;
- 5.1.2. Not to appoint a Sub-Agent to sell touristic services except with MARKETPLACE express prior consent in writing and not do or omit to do anything which may impair or damage the goodwill or reputation associated with MARKETPLACE and/or their suppliers.
- 5.1.3. to inform the customer of the relevant GTC and to provide the possibility to take note thereof;
- 5.1.4. to daily call the relevant information and recommendations, including country-specific particularities and formalities, if any, and to inform its customers thereof prior to departure;
- 5.1.5. to observe restrictions of the Nezasa Tripbuilder IBE, if any.
- 5.2. The Agency shall be liable vis-à-vis MARKETPLACE for all disadvantages resulting from the non-observance of the abovementioned duties.

## Part C – Booking of accommodation, transfers and activities.

### 1. Subject matter

- 1.1. The regulations laid down in Part A shall additionally apply to the booking of accommodation, transfers and activities unless otherwise specified in the following.
- 1.2. MARKETPLACE acts as an agent for accommodation, transfers and activities between the Agency and the service providers. These may include services only but also services with additional services such as food, cleaning, etc. (e.g. hotels). In doing so, MARKETPLACE may use other brokers or agents for agency services.
- 1.3. MARKETPLACE shall act as agent for accommodation/transfers/activities for the accommodation/transfers/activities facilities available and stored in its database, which the Agency may book using Nezasa's Saas Platform "Tripbuilder". The prices indicated are binding. The accommodation/transfers/activities contract and/or reservation contract is always concluded between the operator of the accommodation/transfers/activities facility as service provider and the Agency. The GTC of the service provider used shall apply to these service relationships.
- 1.4. The service contract and/or reservation contract shall become valid with the contents of the booking confirmation by MARKETPLACE. The booking confirmation can be combined with the invoice.

## Part D – Agency of rental cars

### 1. Subject matter

- 1.1. The regulations laid down in Part A shall additionally apply to the agency of rental cars, unless otherwise specified in the following.
- 1.2. MARKETPLACE acts as an agent for the conclusion of rental agreements and reservations for rental cars for the Agency's customers. The vehicles available are compiled in a database and made accessible for the Agency. The rental contract is always concluded between the car rental company as service provider for the booked vehicle and the Agent's customer and/or service recipient indicated by the customer as renter. Bookings shall always be valid for the category booked and not for a certain vehicle model.
- 1.3. The GTC of the respective service provider used shall apply additionally to the service relationship. The rental contract will be concluded directly on site between customer/service recipient and the car rental company in line with the service provider's conditions.



**2. Deposit**

The Agency must inform its customer and/or the service recipient that a deposit is payable before the vehicle is handed over. Based on the rental price, the amount is usually the equivalent value of a tank filling. The calculation also takes into account the amount of the retention in the event of damage, as well as the conclusion of a fully comprehensive insurance.

**3. Special duties of the Agency**

- 3.1. The Agency must inform its customer and/or the service recipient that he/she must be in possession of a valid driving license/permission to drive and that he/she must provide the Agency with a copy of the driving license if requested by the car rental company. Furthermore, the Agency has to inform its customers about the national regulations for cross-border traffic.

**Part E – local tours****1. Subject matter**

- 1.1. MARKETPLACE also provides the Agency with offers from service providers for individual travel services. The Agency is free to compile these individual services into a package tour. The Agency itself acts as a tour operator. It must fulfill all relevant legal obligations of a tour operator or other obligations arising from the applicable Law and Directives on package travel in the selling market and on its own responsibility.