

EU Standard Client Terms and Conditions

TrustYou GmbH

1. The Service

- 1.1. TrustYou GmbH, Steinerstraße 15, 81369 Munich, Germany, ("**Provider**") will furnish Client with online subscription services to access one or more of Provider's software applications, including the following services: TrustYou Analytics (Reputation management based on online traveler reviews), TrustYou Survey (Collection and analysis of verified reviews), TrustYou Marketing (Tools and widgets to market your own hotel reputation, and strengthen direct bookings), TrustYou Messaging (Real-time communication with guests prior and during their stay), TrustYou Operations (Optimization of internal processes through tasks management and internal communication) and TrustYou Connect (Partner platform for data exchange with the TrustYou Guest Feedback Platform) and any other services which Provider may furnish from time to time, to allow Client to collect and analyze guest satisfaction surveys, to monitor consumer generated hotel reviews, images and videos on the Internet, and to communicate with guests through a variety of electronic channels (the "**Services**").
- 1.2. Any specific services to which Client has subscribed are set forth in the separate specific terms entered into by TrustYou and Client in writing or by completion of an online form (the "**Specific Terms**"). The Specific Terms and these Standard Client Terms and Conditions, together, constitute the entire agreement (the "**Agreement**") between the Client and Provider. Provider shall provide access to the contractually agreed Services to an agreed number of persons designated by Client who are employees of or consultants to Client (each, a "**Subscriber**"), as more fully described in the Specific Terms.
In case of online contracting, Client accepts the respective offer of Provider and concludes the Agreement by accepting these Standard Client Terms and Conditions and clicking on the Purchase Button of the online form. The Agreement is provided in the English language only.
- 1.3. Provider will not retain the Agreement after its conclusion and it may not be accessed on Provider's website after its conclusion. However, Client may access, download and store the Agreement upon conclusion of the Agreement.
Provider informs Client and Subscribers that the access to and use of the Services of the Provider by Subscribers respectively individuals requires the Subscribers respectively individuals to be of legal age (18 years +).

2. Term and Termination

- 2.1. The delivery of Services to Client by Provider will commence on the date set forth in the Specific Agreement and continue for the Term stated therein. If no Term is set forth in Specific Terms, then the Term will commence on the date on which Client is first granted access to the Services (the “**Effective Date**”) and will continue for twelve (12) months (the “**Initial Term**”), and effective as of each anniversary of the Effective Date, the Agreement shall automatically extend for an additional one (1) year period (each such one-year period, a “**Renewal Term**”) unless written notice of non-renewal is provided by either party no later than ninety (90) days prior to the end of the then current Term.
- 2.2. Notwithstanding the foregoing, a subscription for the Messaging Service is valid for a period of twelve (12) months, or until Client uses the maximum number of messages permitted for the Messaging Tier selected by Client, whichever occurs first. If Client uses the maximum number of messages permitted for the Messaging Tier selected by Client prior to the expiry of the then- current twelve (12) month Term, Provider shall not be obliged to continue to provide the Messaging Service unless and until Client renews its subscription pursuant to Section 3.2. Following such renewal, the Messaging Service shall be valid for another period of twelve (12) months, commencing on the date of such renewal, or until Client uses the maximum number of messages permitted for the Messaging Tier selected by Client, whichever occurs first.
- 2.3. Provider may terminate the Agreement at any time upon ninety (90) days’ written notice to Client. No later than ten (10) days after expiry or termination of the Agreement, Provider shall purge any contents of Client’s online dashboard or APIs and shall, if requested, certify same in writing to Provider.
- 2.4. Notwithstanding any provision in the Agreement to the contrary, either party may suspend or terminate the Services at any time for the other party’s breach of the Agreement, provided such party has not cured such breach within an adequate period of time set in a written notice from the non-breaching party. The right of the Parties to terminate the Agreement for extraordinary reasons without giving notice remains unaffected hereby.
- 2.5. In the event Client terminates the Agreement prior to the end of the Initial Term or any Renewal Term for any reason other than Provider’s uncured breach of the Agreement, Client shall pay Provider a termination fee equal to the entire amount Client would have paid Provider under the Agreement through the end of the then current Term but for such termination. Client remains entitled to render proof that Provider has suffered no or less damage than the amount corresponding to such entire amount.

3. Fees and Billing

- 3.1. Certain of the Services may, in Provider's sole discretion, be provided without charge. In respect of Services for which Provider charges fees, in consideration of Provider providing such Services and access to the Services, (i) Client shall pay to Provider the fees set forth in the Specific Terms in accordance with the payment schedule specified therein, or (ii) if the Specific Terms do not set forth a payment schedule, Client shall prepay Provider by valid credit card, through electronic funds transfer ("EFT"), the annual or monthly subscription charges for the Services selected within 14 (fourteen) days of the issue date of the invoice.
- 3.2. In respect of the Messaging Service, each subscription fee payment is valid for a period of twelve (12) months, or until Client uses the maximum number of messages permitted for the Messaging Tier selected by Client, whichever occurs first. If Client has used the maximum number of messages permitted for its Messaging Tier prior to the conclusion of such twelve (12) month period, Client must renew its subscription and pay subscription fees in order to continue using the Messaging Service (provided that Client may select a different Messaging Tier).
- 3.3. At any time and from time to time after the Initial Term, Provider reserves the right to modify its fees, including instituting new fees or Services, upon thirty (30) days' prior written notice to Client, and such revised fees shall be deemed to automatically amend the Specific Terms for all purposes hereunder, effective for the next billing period as set forth in the Specific Terms or these Standard Client Terms and Conditions.
- 3.4. In case of a modification of fees to the disadvantage of the Client, the Client has the right to terminate the Agreement toward the end of a 30 (thirty) days period following the day on which the new fees take effect by giving written notice. During such thirty (30) days notice period the former fees will continue to apply for Client.
- 3.5. In the event Provider is unable to successfully charge Client's credit card via EFT, or an invoice is not paid within thirty (30) days after the date of delivery of such invoice, Provider reserves the right to terminate or suspend Client's access to the Services. Unless an invoice specifies otherwise, payment is due in advance on the first day of the Initial Term and of each Renewal Term.
- 3.6. Any Client fees more than thirty (30) days past due are subject to an interest surcharge in accordance with applicable law for each month or part thereof that payment hereunder is past due.

4. Service Deliverables

Provider shall provide Services to Client with the following specifications:

- 4.1. Provider will provide Subscribers with access to the Services, which shall be password protected for the exclusive use of Subscribers through the internet. Client may revise its designation of Subscribers upon prior written notice to Provider.
- 4.2. Provider shall use commercially reasonable efforts to provide comprehensive and accurate Services, subject to the disclaimers set forth in Section VI hereof; provided, however,
- 4.3. Provider cannot assure that all relevant hotel reviews, videos, images, blog entries, article postings, references and other information will be found or delivered, or that irrelevant hotel reviews, videos, images, blog entries, article postings, references and other information will not be delivered.
- 4.4. From time to time delivery of the Services may be delayed due to scheduled or unscheduled maintenance or factors beyond Provider's control, and Provider's failure to deliver the Services in such event or events shall not constitute a breach of the Agreement.

5. Client's Acknowledgments and Agreements

- 5.1. Client shall provide Provider with the following information prior to the commencement of Services: (i) applicable hotel name(s), (ii) hotel website(s), (iii) the names of three of Client's competitors, and (iv) e-mail addresses of all Subscribers. Client agrees, represents and warrants to comply with all applicable data protection laws regarding the aforementioned information.
- 5.2. Client acknowledges that Provider aggregates and provides, but does not generate, the content underlying the Services, and that information furnished by Provider represents the opinions of others and may contain inaccuracies, libelous material, profanity, and pornography. Provider may block certain comments using specific keywords, and Client will have the ability to control the blocking of key words.
- 5.3. Client understands and acknowledges that the Services (other than Messaging) and the information provided in connection therewith are for internal review, analysis, and research only, and Client agrees, represents, and warrants to not redistribute such information, in whole or in part, to others, or publish, make publicly available, broadcast, or sell any material received hereunder.
- 5.4. Client undertakes not to infringe on any copyrights, other rights or proprietary interests of any third party from which data or other information accessible via the Services was generated.

- 5.5. Client undertakes to indemnify, defend, and hold harmless Provider and its employees from and against any and all claims, suits, actions, costs, damages, expenses (including, but not limited to, adequate legal fees) and losses incurred by any of such parties arising out of or related to or occurring in connection with (i) Client's breach of any of its obligations arising out of or in connection with the Agreement, including Client's publication, making publicly available transmission, delivery, or other use of any information or material contained provided or furnished to Client pursuant to the Agreement, (ii) Client's access to and use of the Services; (iii) any Client Content (as defined below); and (iv) Client's violation or infringement of any rights of another (including intellectual property rights or privacy rights).
- 5.6. Upon written request from Provider, Client shall promptly defend or settle such claim, suit, or action at Client's sole expense through counsel reasonably acceptable to Provider; provided, however, Client may not settle or compromise any claim without the prior written consent of Provider, which consent shall not be unreasonably withheld.
- 5.7. In the event Client elects not to defend any claim hereunder, Provider may settle or defend such claim, and shall be entitled to recover from Client the amount of any final settlement or judgment, as well as all costs and fees incurred by Provider in connection with such settlement or defense, including reasonable attorney's fees and expenses.
- 5.8. The foregoing notwithstanding, nothing herein shall prevent Provider, in its sole discretion, from defending or settling any such claim, suit or action at its own expense and through its own counsel.
- 5.9. Client shall not solicit reviews from customers by use of means which might reasonably be expected to impair or unduly influence the judgment of the reviewer and therefore the accuracy or veracity of the review. Practices that are deemed likely to so impair or influence a review include, without limitation:
 - 5.9.1. Compensation payable to the reviewer which is dependent on the content of the review or which constitutes an immoderate incentive;
 - 5.9.2. Exerting pressure on guests to alter or withdraw a review, including through unjustified threat of legal action;
 - 5.9.3. Offering incentives for positive reviews, or for changing negative reviews; Soliciting or knowingly publishing reviews created by people other than hotel guests, or by insiders or other parties affiliated with Client; and
 - 5.9.4. Soliciting reviews only from guests already identified as satisfied or otherwise likely to post a positive review.

Client will inform Provider of the nature and extent of its planned promotions which increase or are intended to increase the volume or nature of reviews.

- 5.10. Client undertakes that Client's access to and use of the Services will comply with all applicable laws, rules and regulations, including but not limited to those that relate to privacy and data protection and electronic communications. Client further warrants that Client has all necessary permissions to allow Provider to receive and process Client Content and send communications to individuals on Client's behalf. Client is responsible for ensuring that Client meets all notice and consent obligations for sending communications to individuals in the jurisdictions where they reside. Client is solely responsible for determining whether the Services are suitable for Client to use in light of any laws and regulations that govern Client, its industry, or its relationship with its customers, including but not limited to consumer protection, privacy, advertising, intellectual property or other laws. Client may not use the Services for any unlawful or discriminatory activities.

6. Disclaimers and Limited Warranties

- 6.1. Provider shall make no effort, and shall not be required hereunder, to substantiate the truthfulness of any information provided in connection with the Services, and Provider does not endorse, warrant, attest to, or make any judgment about any such information.
- 6.2. Provider does not assume any guaranty or warranty for the uninterrupted availability, functionality and compatibility of the Services, websites and applications of Provider. Provider is not responsible for any interruption of the Services in connection with programs, systems, websites, as well as restrictions of use and other consequences to Client that are not part of the Services of Provider and that Provider does not have any influence on.
- 6.3. Provider is not responsible for content, the lawfulness and functionality of websites of third parties that links are provided to in connection with the Services. The exclusive liability lies with the providers of such websites.
- 6.4. In case of force majeure, Provider is not obligated to perform its Services for the period of force majeure. If force majeure continues for more than three months, Client is entitled to terminate the Agreement with Provider.

7. Limitation of Liability

- 7.1. Provider is fully liable in case of intentional or grossly negligent behavior.
- 7.2. In case of ordinary negligence, Provider – other than in cases of violation of life, body or health – is only liable if material contractual obligations (“Kardinalpflichten”) are violated. “Kardinalpflichten” are contractual obligations that the agreement has to grant to the user according to the purpose of the agreement or whose fulfilment enables the proper performance of the agreement in the first place and therefore may be relied upon by Client. In this case the liability of Provider is restricted to the typical and foreseeable damage, at maximum to the remuneration to be paid by Client per contractual year.

- 7.3. Any liability for indirect and unforeseeable damages as well as loss of profit is excluded in case of ordinary negligence, unless the requirements for unrestricted liability in accordance with Section 7.2 apply.
- 7.4. With regard to the above liability provisions, Provider is only liable for damages relating to loss of data if such damages also would have occurred in case of proper and regular data storing measures by the Client.
- 7.5. Any liability that goes further than in this agreement is excluded, irrespective of the nature of the asserted claim.
- 7.6. The limitations and exclusions of liability in accordance with Section 7.2 through 7.5 do not apply for statutory liability irrespective of default of Provider or for liability resulting from a contractually agreed upon guarantee that applies irrespective of default.
- 7.7. To the degree that the liability of Provider is limited or excluded, this also applies to the personal liability of its employees, directors, officers, representatives and agents.

8. Intellectual Property Right

- 8.1. Provider is and shall be the sole owner of all of its trademarks, patents, patent applications, copyrights, trade secrets and other intellectual property, including without limitation any and all software code, business systems, sales and other data (including, without limitation, any data collected via the Services), developed by, for or on behalf of Provider whether now existing or later developed and whether or not relating to Client, and all derivatives thereof, other than Client Content, as defined below (the “**Provider IP**”).
- 8.2. In addition, the look and feel of the Services, including without limitation, all page headers, custom graphics, button icons and scripts, constitute the trademark or corporate identity of Provider and may not be copied, imitated or used, in whole or in part, without Provider’s prior written permission. Nothing contained in the Agreement is intended to convey, or shall be construed to convey, to Client any right, title or interest in or to the Services or the Provider IP, the information gathered or provided in connection therewith, or any of the software underlying the gathering of information in connection with the Services. All right, title and interest in and to the Services and the Provider IP and any information gathered or provided in connection therewith is owned exclusively by Provider.
- 8.3. Client retains all rights in and to the content Client provides through the Services, including but not limited to Client’s logos, designs, text, graphics, images, customer lists, messaging content and other campaign materials (collectively “Client Content”) and Provider does not claim any ownership interest in or to Client Content. However, by using the Services, Client grants to Provider a limited, non-exclusive, revocable license to access, use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display Client Content solely for purposes of providing and improving the Services.

- 8.4. By uploading Client Content to the Services or otherwise submitting it to Provider, Client represents and warrants that (i) Client owns and controls all of the rights to Client Content otherwise has all necessary rights to provide such Client Content (ii) Client authorizes Provider to use such Client Content for the purposes described in this Agreement; (iii) the Client Content is accurate and not misleading or harmful in any manner; and (iv) the Client Content, and Client's use and submission thereof, does not and will not violate this Agreement or any applicable law, rule, regulation or third party right.

9. Confidential Information

- 9.1. "Confidential Information" for purposes of the Agreement includes, but is not limited to information that (i) has been or is developed or is otherwise owned by either party hereto or any of their respective affiliates, whether developed by such party or an affiliate of such party or by any other person for or on behalf of such party or affiliate of such party, (ii) is not readily available to the public and not generally ascertainable by proper means by the public, (iii) if disclosed to the public, would be harmful to the interests of a party or an affiliate of a party, or (iv) is treated or designated by a party hereto or an affiliate of a party hereto as being confidential.
- 9.2. Confidential Information shall not include any information that (i) is or becomes publicly available, other than through the fault or negligence of the receiving party; (ii) was known to the receiving party, without restriction, at the time of receipt; (iii) is rightfully and lawfully obtained by the receiving party from a third party rightfully and lawfully possessing the same without restriction; (iv) is independently developed by the receiving party without having had access to the information disclosed hereunder; or (v) is obligated to be produced under an order of a court of competent jurisdiction, provided that the disclosing party is immediately notified by the recipient.
- 9.3. Each party hereto agrees that such party will not, directly or indirectly, at any time disclose to any person, or take or use for any purpose, other than for purposes in accordance with the intent of the Agreement, any Confidential Information. The obligations of the parties in this Section IX apply to, and are intended to prevent, the direct or indirect disclosure of any Confidential Information to any person where such disclosure of the Confidential Information would reasonably be considered to be useful to the competitors of a party or a party's affiliates or to any other person to become a competitor based, in whole or in part, on such Confidential Information.

10. Miscellaneous Provisions

- 10.1. The Agreement may be assigned in whole or in part by Provider at any time. Client may not assign the Agreement without the prior written consent of Provider.
In case that any provision in the Agreement is invalid or becomes invalid, the remaining provisions remain unaffected hereby. The parties undertake to replace the invalid provision by a valid provision that comes as close as possible to the invalid provision in legal, economic and factual terms. The same applies in case of a loophole in these terms and conditions.
- 10.2. The place of contractual fulfillment is Munich, Germany.
The Agreement between the Parties is exclusively subject to German law to the exclusion of legal principles that may refer to other jurisdictions. The application of the CISG Convention is excluded.
- 10.3. The exclusive place of jurisdiction shall be Munich, Germany. The Regional Court Munich I ("Landgericht München I") shall have jurisdiction over all disputes arising from the Agreement.
- 10.4. Client's use of the Services, and Provider's provision of the Services, will signify the parties' assent to and acceptance of the terms of the Agreement.
- 10.5. Provider reserves the right to amend the terms of use of the Services at any time and without notice, and it is Client's responsibility to review the Agreement for any changes. Client's use of the Services following any amendment of the posted terms of this Agreement will signify Client's assent to and acceptance of the revised terms of any component thereof.
- 10.6. Any and all notices, requests, claims, demands and other communications required or permitted hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by facsimile, by nationally recognized overnight courier, or by express, registered or certified mail to the respective party at the address or facsimile number first set forth above (or at such other address as a party shall specify in a written notice given in accordance with this paragraph).
- 10.7. The Agreement, consisting of any Specific Terms and these Standard Clients Terms and Conditions constitute the entire agreement between the parties with respect to the delivery of Services, and the information provided in connection therewith, and supersede all prior or contemporaneous agreements, proposals, negotiations, representations or communications, whether written or oral, relating to such subject matter. The parties acknowledge and agree that they have not been induced to enter into the Agreement by any representations or promises not specifically stated herein.
- 10.8. Changes and amendments to this Agreement need to be made in writing. This also applies to a change of this writing requirement.