

Buller Holidays Pty Ltd ACN 165 086 126

Booking Service

Terms and Conditions

Introduction

Buller Holidays promotes tourism in the Mansfield Mt Buller Region and provides a service whereby a guest can book accommodation, activities, events, travel and other related products.

The Supplier has authorised Buller Holidays to make its Travel Product available on the Website and to take bookings in its Call Centre for its Travel Products on its behalf under the Terms and Conditions of this Agreement.

Agreed Terms

1 The Website is a host site only.

- (a) The Booking Service allows Suppliers to offer Travel Products to customers through the website and call centre.
- (b) Buller Holidays does not act as an agent in relation to the Travel Product. Buller Holidays is not a party to any contractual agreement between the Supplier and the Products, even though it provides a booking and payment platform.
- (c) Buller Holidays does not mediate between the Supplier and the Guest in the event that a dispute arises between them.
- (d) The Supplier enters into any transaction with the Guest or any third party at its own risk.
- (e) Nothing in these terms and conditions or any associated circumstances gives rise to any relationship of joint venture, agency, partnership or employer and employee between Buller Holidays and the Supplier or between Buller Holidays and the Guest. The Supplier has no right to assume or create any obligations of any kind, express or implied, in the name of or on behalf of Buller Holidays.

2 Definitions and Interpretation

2.1 In this Agreement:

- (a) **Alpine Year** means the year beginning 1 November and ending on 31

- October of the next year.
- (b) **BMCG** means the Buller Mansfield Committee of Governance, being the committee made up of persons nominated by Members tasked with the responsibility for oversight of the Professional Services Agreement and MOU with Buller Holidays.
 - (c) **Booking Commissions** means the commission payable to Buller Holidays in accordance with clause 8 of this Supplier Agreement and clause 2.1(e) of the Fair Trade Policy and is a different rate for Single Supplier bookings and Multiple Supplier bookings.
 - (d) **Booking Service** means booking of Travel Products via Buller Holidays either Online or via the Call Centre, or a combination of both.
 - (e) **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne;
 - (f) **Business Hour** Business hours are the hours in the day in which business is commonly conducted.
 - (g) **Buller Holidays** means Buller Holidays Pty Ltd ACN 165 086 126 and where the context permits includes its employees, agents, contractors and permitted assigns.
 - (h) **Call Centre** means the phone booking service provided by Buller Holidays.
 - (i) **Call Centre Booking** means a reservation processed through the Call Centre.
 - (j) **Claim** means any claim, demand, action or proceeding in relation to the performance or non-performance of the services, products or any other obligation under these conditions, whether arising under the law of contract, equity, tort (including negligence), strict liability, breach of statutory provision or otherwise.
 - (k) **Equipment Rental Product** means the supplier of Travel Product that is equipment rental of skis, boots, ski clothing and like products.
 - (l) **Equipment Rental Online Transaction Capability** means that Equipment Rental Product can be ordered Online in its entirety, including experience level, boot size, stock size, length of skis, clothing sizes and like measurements for all available hire equipment, so that a Guest can use the Online Booking Service and pick up the pre-ordered and pre-fitted Equipment Rental Product from Supplier.
 - (m) **Fair Trading Policy** means the policy agreed to by Buller Holidays, the Members and the Supplier to govern the terms of their relationship.
 - (n) **Fulfilment Date** is the first date that a Travel Product on an itinerary is initiated.
 - (o) **GST** has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
 - (p) **Guest** means a member of the public who uses the Booking Service to place a booking for the Supplier's Travel Product through Buller Holidays.
 - (q) **Guest Terms and Conditions** means the terms and conditions between the

- Guest and Buller Holidays found on the Website.
- (r) **House Rules** means the terms and conditions on which a Supplier supplies the Travel Product to the Guest and is in addition to the Guest Terms and Conditions.
 - (s) **Inntopia** is a travel reservation system, licensed to Buller Holidays, used for the promotion and sale of Travel Products and incorporated into the Website
 - (t) **Inntopia RMS** is the online, cloud based content management system used by Suppliers to manage and administer the supply of Travel Products to Buller Holidays.
 - (u) **KPI** means the key performance indicators that will be set from time to time between the Members and Buller Holidays.
 - (v) **Members** means collectively, and where the context permits, singularly, the Mt Buller Chamber of Commerce, Mt Buller and Mt Stirling Alpine Resort Management Board, Mt Buller Rates Payers Association and the Mansfield Shire.
 - (w) **MOU** means the Memorandum of Understanding between the Members and Buller Holidays dated 19 December 2016.
 - (x) **Multiple Supplier Booking** means when a guest books products from more than one Supplier in the same booking.
 - (y) **No Show** is a reservation that is not cancelled prior to the Fulfilment Date and where the Guest does not show up to claim the reservation.
 - (z) **Online Booking** is a reservation processed through the Website.
 - (aa) **Origin of Booking** refers to the first point of entry by a Guest into the Booking Service, which results in a booking.
 - (bb) **OTA** means online travel agency.
 - (cc) **Privacy Policy** means the privacy policy between Buller Holidays and users of the Booking Service, including the use of the Booking Service by Guests and Suppliers.
 - (dd) **Professional Services Agreement** means the agreement between the Members and Buller Holidays whereby Buller Holidays is appointed to supply professional services.
 - (ee) **Related Entities** has the meaning given to it in the *Corporations Act 2001* (Cth)
 - (ff) **Single Supplier Booking** means when a guest books products from only one Supplier in the same booking.
 - (gg) **Snow Guarantee** means the guarantee detailed on www.mtbuller.com.au.
 - (hh) **Snow Product** means lift tickets, ski school and like services.
 - (ii) **Supplier Agreement or Agreement** means this Agreement and any schedules and annexures attached to it.
 - (jj) **Supplier** (or 'you' or 'your' or 'I' or 'we') means the supplier of the Travel Product. The supplier is required to set-up and manage an Inntopia RMS account to allow Buller Holidays to transact with the Guest.

- (kk) **Term** means from the date of this Agreement to 31 October 2019.
- (ll) **Transfer Price** means the price, at the date of supply, at which Snow Product is offered to all Suppliers for the purpose of packaging with the Supplier's Travel Product as a Packaged Product.
- (mm) **Travel Products** include, but are not limited to hotel rooms, apartments, vacation homes, campsites, vacation packages, activity passes, tours, event tickets, equipment rentals, lift tickets, ground transportation, resort entry and parking, spa services, souvenirs, travel insurance and any other items sold through the Booking Service.
- (nn) **Website** means the website accessed via any URL licensed to, provided by or utilised by Buller Holidays, including but not limited to www.mtbuller.com.au.

2.2 In this Agreement, unless otherwise indicated by the context:

- (a) words importing the singular include the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation of this Agreement;
- (c) a reference to a clause, paragraph, schedule or the Details page is a reference to a clause, paragraph, schedule or the Details page of this Agreement;
- (d) where any word or phrase is given a definite meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (e) an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity;
- (f) a reference to a statute, statutory provision or regulation includes all amendments, consolidations or replacements thereof;
- (g) a reference to a party to a document includes that party's legal personal representatives, successors and permitted assigns;
 - (i) a covenant or agreement on the part of or for the benefit of two or more persons binds or benefits them jointly and severally;
 - (ii) a reference to a body, whether statutory or not:
 - (iii) which ceases to exist; or
 - (iv) whose powers or functions are transferred to another body,
 - (v) is a reference to the body which replaces it or which substantially succeeds to its powers or functions; and
- (h) including and similar expressions are not words of limitation.

3 Product

- (a) The Supplier will ensure that it and its Travel Products
 - (i) are provided to the highest possible standards and quality,
 - (ii) treat all Guests equally and provide Guests with a high level of respect and customer care;
 - (iii) comply at all times with all applicable legal requirements;
- (b) The Supplier agrees to be bound by the Guest Terms and Conditions in so far as they relate to the Travel Product, including, but not limited to the cancellation policy.
- (c) In order to familiarise themselves with the Travel Products, Buller Holidays staff may request an inspection of the Supplier's premises at a mutually convenient time. The Supplier will assist and cooperate with any inspection.

4 Eligibility

- (a) The Suppliers must provide Buller Holidays with a commissionable Travel Product.
- (b) Online participation commences in the Alpine Year in which the Supplier's business page is first uploaded, displayed and made available for bookings on the Website.
- (c) Acceptance of the Travel Product to the Booking Service will be at the discretion of Buller Holidays.

5 Information

- (a) All information published by Suppliers on the Website and provided to Buller Holidays must be true and accurate.
- (b) Suppliers who publish false and/or misleading information or information that may offend members of the general public (text or pictures) will have their listing removed immediately from the Website.
- (c) The Supplier must ensure that it regularly updates information in its Inntopia RMS account.
- (d) Buller Holidays is not liable for any information displayed via the Booking Service by the Supplier.

6 Using the Service

- (a) Upon entering into this Agreement, the Supplier is provided with access to an Inntopia RMS account, created by either the Supplier, Buller Holidays or Inntopia partner services. This account is to be set-up and managed by the supplier. Buller Holidays along with Inntopia partner services will provide support.

7 Booking Commission

- (a) The Booking Service is provided as a free service to the Guest
- (b) A Booking Commission of 5% (including GST) of the total amount of the booking made by the Guest is payable to Buller Holidays on all Online Single Supplier Bookings.
- (c) A Booking Commission of 12% (including GST) of the total amount of the booking made by the Guest is payable to Buller Holidays on all Multiple Supplier Bookings, and all bookings made through the Call Centre.
- (d) The Booking Commission may be altered in accordance with the Fair Trade Policy.

8 Reservation Payment

- (a) For all bookings, full payment will be made to Buller Holidays at the time of booking.
- (b) Buller Holidays will deposit the booking payments, less Booking Commission, directly to the account nominated by the Supplier within 5 Business Days of the second Sunday of June, July and August and the last Sunday of each month.

9 Reservation Confirmation

- (a) Suppliers will receive electronic notification of a booking to the nominated email address in their Inntopia RMS supplier account.

10 Rates and Availability

- (a) The Booking Service is a complimentary service to the Guest and the Booking Commission must be included in the rates published by the Supplier.
- (b) The Supplier authorises Buller Holidays to take both Online and Call Centre bookings for the Supplier's Travel Product on behalf of the Supplier.
- (c) Suppliers are responsible for setting their own rates and publishing them in their Inntopia RMS Supplier account.
- (d) Suppliers shall update Travel Product availability regularly and guarantee the published availability and rates.
- (e) Suppliers' House Rules must be entered into the Website system via the Inntopia RMS Supplier account.
- (f) The Supplier agrees that where there is a contradiction or conflict between its House Rules and these Terms and Conditions then these Terms and Conditions shall take precedence.
- (g) Buller Holidays will not be held responsible for incorrect rates or availability of the Travel Product.

11 Double Booking

In the event of a double booking

- (a) The Supplier is responsible for double bookings.
- (b) The Supplier is required to find suitable alternative Travel Product and accept any additional costs associated with the re-booking.

12 Cancellation and Refunds

The Supplier agrees that where there is a conflict or contradiction between Buller Holidays' cancellation policy specified below in clause 12(b) and the Supplier's cancellation policy, then the cancellation policy in these Terms and Conditions shall take precedence.

(a) Cancellation due to Supplier unable to supply the Travel Product

- (i) If Buller Holidays has taken a booking for the Supplier's Product, and the Supplier is then unable to supply the product, the Supplier must provide a product of a similar standard and quality acceptable to the Guest, or at the Guest's election, promptly refund the Guest's money. Buller Holidays will only pay the booking fee, less its commission, to the Supplier upon receipt of evidence from the Supplier of the refund. The Supplier shall be responsible to refund the Guest.
- (ii) The Booking Commission remains payable to Buller Holidays.

(b) Cancellation by the Guest

- (i) Cancellations made within a 30 day cancellation period or caused by No Show are non-refundable unless otherwise agreed between the Supplier and Buller Holidays.
- (ii) For cancellations outside the 30 day (inclusive) cancellation period, monies will be refunded to the Guest, less a 10% non-refundable deposit. Buller Holidays shall make the refund to the guest and deduct the amount from the next scheduled reservation payment to the Supplier.

(c) Debts owed to Buller Holidays

- (i) Buller Holidays may, at its discretion, directly refund payments made pursuant to this clause where it has already accounted to the Supplier.
- (ii) The amount paid pursuant to clause 12(c)(i) shall be payable immediately by the Supplier to Buller Holidays and the Supplier agrees that the payment by Buller Holidays to the Guest is sufficient to show

proof of debt in any enforcement proceedings.

13 Guest Check-in

The Supplier is responsible for Guest check-ins and details should be included in the Supplier House Rules.

14 Guest Complaints & Grievances

- (a) Guest complaints received by Buller Holidays shall be forwarded to the Supplier to take appropriate action.
- (b) The Supplier must respond within 14 days of receipt and provide Buller Holidays with a copy of the response to the guest.
- (c) Where there are ongoing complaints, especially those regarding hygiene, cleanliness or safety, Buller Holidays reserves the right to suspend the listing of the Supplier.
- (d) Supplier complaints and grievances should be directed to the Buller Holidays Manager

15 Dispute Resolution Procedure

(a) Meeting of representatives

- (i) If a dispute arises under these Terms and Conditions, either party may at any time serve notice to the other requesting that a meeting take place to seek to resolve the dispute. The senior representatives of both parties (as nominated by the respective party from time to time) must meet within 10 Business Days of service of the notice and try to resolve the dispute in good faith.
- (ii) If such a meeting does not take place, or if the dispute remains unresolved for 14 Business Days after the meeting, the parties may, at the request of either party in writing to the other, agree that the dispute be considered and mediated by BMCG in accordance with Special Condition 15(b)

(b) Meeting with BMCG

- (i) If the dispute has not resolved in accordance with clause 15(a), either party may in writing request that BMCG provide preliminary assistance to mediate the dispute.
- (ii) The BMCG must appoint members to mediate the dispute and shall appoint a date for all parties to meet that within 10 Business Days of the notice,

unless an alternative later date is otherwise agreed by the parties.

- (iii) The location will be agreed by the parties; otherwise the location shall be one of the Buller Holidays' offices.
- (iv) The members of the BMCG that are appointed by the BMCG to mediate the dispute shall exclude any member of its committee that are parties to or Related Entities of the parties to the dispute.
- (v) Each party has the right to make submissions orally or in writing to the BMCG no less than 2 Business Days prior to the scheduled meeting.
- (vi) All parties must bear their own costs to prepare for and attend the mediation.
- (vii) The BMCG may join any person that it considers appropriate to join as a party to the mediation, provided that person is not a Related Entity to either party to the dispute.
- (viii) Mediation is conducted on a "without prejudice" basis and any statements made by the parties during mediation are not admissible in any other legal proceedings.
- (ix) BMCG role is to act as mediator and not as an expert.
- (x) BMCG or any person acting as mediator is not civilly or criminally liable in respect of the performance, in good faith, of the function of a mediator under this section 15(b).
- (xi) If such a meeting does not take place, or if the dispute remains unresolved for 14 Business Days after the meeting, the parties may, at the request of either party in writing to the other, agree that the dispute be determined by an expert in accordance with Special Condition 15(c)

(c) Expert

- (i) The expert will be a person who the parties agree is an appropriate person for determining the subject matter in dispute. If the parties are unable to agree on the appointment of an expert within 10 Business Days of the service of notice under Special Condition 15(a)(a)(ii), either party can request the President for the time being of the Law Institute of Victoria to nominate an expert ('Expert').
- (ii) The Expert appointed will act as an expert and not as an arbitrator and the Expert's determination is conclusive and binding on the parties (except in the case of manifest error and provided that the decision is not one regarding a matter of law).
- (iii) The parties must equally share the fees and expenses of the Expert. The parties must bear their own costs in relation to the dispute.
- (iv) Each party has the right to make submissions orally or in writing to the Expert within 10 Business Days of acceptance of appointment by the Expert. The Expert must have regard to the submissions and must give the parties the determination in writing including a statement of reasons, within 28 days

of acceptance of appointment.

(d) **Continued performance**

The parties must continue to perform their obligations under this Agreement despite the existence of a dispute, except to the extent that the matter, the subject of the dispute and the matters necessarily dependant on it, cannot proceed until the dispute has been resolved.

(e) **Other rights**

This clause 15 does not restrict or limit the right of either party to obtain interlocutory relief, or to immediately terminate this Agreement where such right exists.

16 Fair Trading Policy and Privacy Policy

- (a) Buller Holidays and the Suppliers agree to be bound by the Fair Trading Policy and the Privacy Policy attached to this agreement.

17 Sale of Supplier's Business

- (a) If the Supplier proposes to sell the whole of its business, or the assets used to run its business or a controlling interest in the shares in its business, the Supplier must give Buller Holidays written notice at least 14 days before settlement of the proposed sale.
- (b) The Supplier must adjust deposits and Travel Product payments between the Supplier and the incoming supplier (purchaser of the business) and Buller Holidays.
- (c) The Supplier must ensure that the incoming supplier honours all forward bookings.
- (d) Buller Holidays is not liable for any Claim as a result of any action of Buller Holidays where the Supplier has breached clause 17(a).

18 Indemnity and Insurance

- (a) To the extent provided by law, the Supplier:
- (i) Indemnifies and keeps indemnified Buller Holidays from and against any Claim in relation to the provision (or failure to provide) the Travel Product.
 - (ii) Shall make no Claim on Buller Holidays in relation to the provision of (or failure to provide) the Booking Service.
- (b) The Support Services Guidelines of Inntopia are attached as Exhibit C and the Supplier agrees to be bound by these guidelines.
- (c) The Supplier must take out and maintain during the term of this Agreement, a

policy of Public Liability Insurance with a reputable insurer in the sum of \$20,000,000 or such other amount as specified by Buller Holidays from time to time.

19 Confidentiality

- (a) Buller Holidays undertake to maintain confidentiality regarding the Guests and Suppliers' personal details, other than information required to make a booking.
- (b) The Suppliers' privacy policy must not be in contravention of the Privacy Policy.

20 Intellectual Property

- (a) All content that appears on the Website and Inntopia is protected by copyright and database rights. Reproduction of the Website, in whole or in part, including the copying of text, graphics or designs, is prohibited.
- (b) The Supplier is permitted to download, display or print its own pages of the Website to evidence the Agreement with Buller Holidays. Any printout must clearly bear the text © 2016 Buller Holidays Pty Ltd – All rights reserved.

21 Termination

- (a) Buller Holidays may terminate this Agreement immediately by notice to the Supplier if the Supplier
 - (i) Commits an act of bankruptcy or becomes subject to any form of insolvency administration;
 - (ii) Breaches this Agreement, including a breach of the quality of supply of the Travel Product in clause 3;
 - (iii) In the reasonable opinion of Buller Holidays has brought Buller Holidays into Disrepute; or
 - (iv) Ceases to provide Travel Product.
- (b) Either party may end this Agreement on providing the other party with 3 months' notice in writing.
- (c) On termination of this Agreement, all information regarding the Travel Product shall be removed from the Website and Call Centre.

22 Governing law and jurisdiction

- (a) This Agreement is governed by the laws of Victoria.
- (d) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

Supplier Agreement

Between
Buller Holidays Pty Ltd ACN 165 086 126 and the Supplier

I/We _____ Supplier
of _____ Product Name
_____ and Address

Hereby agree to place bookings through Buller Holidays for the Term, and agree on the terms and conditions of this Agreement.

- I/We agree to pay the Booking Commission as required by the Terms & Conditions.
- I/We agree to keep property information, availability, rates and House Rules current as required by the Terms & Conditions.
- I/We understand that the Booking Service offered by Buller Holidays is a complimentary service to Guests.
- I/We have/will maintain PLI insurances and provide evidence as required by the Terms & Conditions.
- I/We agree to abide by the terms and conditions as outlined in the Agreement.
- I/We agree abide by the terms and conditions of Fair Trading Policy.
- In signing this Agreement, I/we acknowledge that as an agent or manager of a Travel Product, I/we have been authorised by the owner of that Travel Product to accept bookings from Buller Holidays.

Signed for and on behalf of the Supplier:

Signed for and on behalf of Buller Holidays:

Name _____

Name _____

Signature _____

Signature _____

Date _____

Date _____

Schedule 1: Reference Schedule

| | |
|------------------|----------------------|
| Name of Supplier | |
| Trading As | |
| Address | |
| PH | |
| Email | |
| Bank Account | BSB: ACCOUNT: |
| Travel Products | |

Schedule 2: Fair Trading Policy