

Terms & Conditions for the use of the Internet-Based Hotel Management Software

1 Scope of application

1.1 These General Terms and Conditions (hereinafter referred to as "T&C") apply to all contracts concluded between HotelFriend Service GmbH, Friedrichstr. 171, 10117 Berlin, Germany (hereinafter "HotelFriend") and hotels and other accommodation providers (hereinafter "Client"); together with HotelFriend (the "Parties" and each individually "Party") for the provision and operation of the internet-based software platform for the management and retrieval of the services specified in the service description (Annex 2), which can be accessed at www.hotelfriend.com/software.

1.2 HotelFriend has developed a modular hotel management software. This software, copyrighted for HotelFriend AG, is an internet-based software solution that includes key functions in hotel work organisation according to the services specified in the service description (Annex 2). HotelFriend provides this software for use over the Internet as a Software-as-a-Service (SaaS) solution.

1.3 The Client wishes to use the hotel management software on a rental basis. The use of the HotelFriend system is based on the below-mentioned General Terms and Conditions (hereinafter "T&C").

1.4 These T&C apply exclusively. Deviating, contradictory or additional terms and conditions of the Client will only become part of the contract if and to the extent that HotelFriend has explicitly agreed in writing to their inclusion. This requirement for consent applies in every case, particularly even if HotelFriend delivers services without reservation, knowing the Client's General Terms and Conditions. The inclusion of differing, contrary or additional conditions requires a written contract or the written confirmation of HotelFriend.

2 Contract conclusion; Subject of the contract; Obligations of HotelFriend

2.1 The subject of the contract is the hotel management software developed by HotelFriend. The hotel management software is offered in packages that differ in scope and price. The scope of services can be taken from the service description (Annex 2) and is determined by the selection made by the client in the order form. Both the hotel management software and the program modules mentioned in the service description are hereinafter referred to as "Contractual Software".

2.2 A binding order and thus the conclusion of the contract is effected by sending the order form to HotelFriend and HotelFriend accepting the customer's offer. If contracts are concluded via the HotelFriend website, the IP address and user data at the time of the order are recorded and stored together with the contract documents.

2.3 HotelFriend provides the Client with the Contractual Software described in detail in the service description for use over the internet during the term of the contract. The Client thus obtains the technical possibility and authorisation to access the Contractual Software, which is hosted on a central cloud infrastructure, via the internet and use the functionality of the Contractual Software within the scope of this contract.

2.4 The place of performance for HotelFriend's contractual services is the router exit of the data center used by HotelFriend. The Client's connection to the Internet, the maintenance of the network connection as well as the procurement and provision of hardware and software required on the Client's side are not subject to this contract.

2.5 The Contractual Software is available seven days a week, although there may be partial or complete availability restrictions due to software

maintenance work from 02:00 to 6:00 AM ("Operating Time"). The average availability during the Operating Time is over 99.8% per year. The application may still be available, albeit with interruptions and restrictions, during other times ("Maintenance Times"); there is no right to use the service during these times. HotelFriend will notify the client in advance, as far as possible, if maintenance work is necessary during operating hours and the application cannot therefore be available, provided the maintenance cannot be postponed and it was not previously known to HotelFriend.

2.6 HotelFriend provides a German-language user documentation in electronic form only. This contains detailed instructions and regulations for the use of the Contractual Software. Insofar as HotelFriend additionally provides foreign language software applications produced by third parties and a German version of the user documentation is not generally available from the third-party manufacturer, HotelFriend may provide the user documentation in English.

2.7 HotelFriend provides the Client with storage space and undertakes to back up the transferred data. HotelFriend will use virus scanners and firewalls to prevent or block unauthorised access to the Client's data and the transmission of harmful data, in particular viruses, as far as this is possible with reasonable economic and technical effort. However, the Client is aware that full protection against harmful data is not possible. If a threat cannot be eliminated by other means in a technically and economically reasonable and promising manner, HotelFriend is entitled to delete data belonging to the Client that is contaminated with harmful content. HotelFriend will notify the Client of this and allow the Client to back up the Client's data before the backups are deleted. The Client alone is responsible

for compliance with commercial and tax law retention periods.

2.8 HotelFriend backs up its servers once a day in the maintenance period and keeps the data backups for at least 7 working days. Additionally, HotelFriend secures the data against unauthorized access with reasonable effort, in line with state-of-the-art technology and economically reasonable. In the event of data loss, HotelFriend will restore the last available data stock free of charge.

2.9 HotelFriend undertakes to maintain the Contractual Software, in particular to diagnose and rectify defects within a reasonable period of time. Defects are significant deviations from the contractually defined specification. Additional maintenance services that do not serve to rectify defects may be provided by HotelFriend subject to separate agreement and for separate remuneration.

2.10 HotelFriend provides the Client with various support services depending on the type of service package chosen by the Client. The details are governed by the service specification.

2.11 HotelFriend provides the Client with free product support via email. Queries received will be answered by HotelFriend within 48 hours (excluding weekends and statutory and regional holidays).

2.12 Unless explicitly mentioned above or in the listing of services, HotelFriend does not owe any further services. In particular, HotelFriend is not obliged to provide installation, setup, consulting, adjustment, and/or training services beyond what is included in the service package, or to create and provide custom programming or additional programs.

3 Rights of use

3.1 For the duration of this contract, HotelFriend grants the Client the payable, non-exclusive, non-transferable, and non-sublicensable

right to use the contractual software on the system at HotelFriend's data centre. The contractual software is not provided to the client. If HotelFriend provides new versions, updates, or upgrades of the contractual software during the term of this contract, the above-mentioned right of use applies to these in the same way. However, HotelFriend is not obliged to provide new versions, upgrades, or updates unless this is absolutely necessary for the elimination of defects or if agreed otherwise in this contract. Beyond the purposes of this contract, the Client is not entitled to use the contractual software or other data than his own, to reproduce, download, or make them accessible to third parties outside the agreed circle of users.

3.2 For each case in which the Client culpably allows the contractual software to be used by third parties or grants third parties unauthorised rights of use, the Client shall pay a lump sum compensation to the amount of double the contractually due remuneration for each case. The Client has the right to prove that no damage or significantly lower damage occurred. All further rights of HotelFriend remain unaffected by the above regulation.

3.3 In the event of unauthorised transfer of use or grant of rights of use, the Client shall, upon request, immediately provide HotelFriend with all information necessary for the assertion of claims against the user, in particular his name and address and the duration of the period of use, and shall prevent any future transfer of use.

3.4 The Client grants HotelFriend the right to use the information received from him or his authorised representatives for the operation of the contractual software in the execution of the contract. HotelFriend is also entitled to keep backups of the information in a backup data centre.

3.5 If the contractual use of the services is impaired by third-party rights without fault on the part of HotelFriend, HotelFriend is entitled to

refuse the services affected.

HotelFriend will immediately inform the Client and enable him to access his data in a suitable manner. The Client is entitled to a reasonable reduction of the remuneration during the period of impairment of use. Other claims or rights of the Client remain unaffected.

4 Obligations of the Client

4.1 The Client will fulfil all obligations necessary for the performance and execution of this contract in a timely, complete, and professionally correct manner.

4.2 After the conclusion of the contract, the Client will name a contact person for HotelFriend. This person will in particular provide the necessary information for the execution of this contract and is considered authorised to make decisions with legal effect. The Client may name another or additional contact persons. Changes in the person of the contact person must be immediately communicated to HotelFriend.

4.3 The Client will also be solely responsible for ensuring that the users have an Internet connection and suitable software and hardware equipment or configuration according to the service description (Annex 2) from HotelFriend. The operation and maintenance of these technical prerequisites lie solely in the responsibility of the Client.

4.4 The Client will protect his or the users' assigned user and access authorisation as well as identification and authentication security against access by unauthorised third parties and not pass them on to unauthorised users. As soon as the user has evidence that the usage and access rights have been unlawfully obtained by a third party or could be misused, the Client is required to immediately notify HotelFriend for the purposes of minimising damage.

4.5 The Client will inform HotelFriend (mobile IV) about the authorised

persons intended by him for the use of the contractual software.

4.6 Furthermore, the Client will obtain the required consent from the respective person concerned, insofar as he collects, processes, or uses personal data in the course of using the contractual software and there is no legal permission for this. The Client will also comply with all data protection and other legal requirements.

4.7 The Client will not misuse or allow the misuse of the contractual software in any way, particularly transmit contents with illegal content. The Client will also avoid any attempt to retrieve information or data without authorisation, either himself or by unauthorised third parties, to interfere with or allow interference with programs operated by HotelFriend, or to intrude unauthorised into data networks of HotelFriend.

4.8 The Client will report errors in the contractual performance to HotelFriend immediately at least in text form, indicating how and under what circumstances the error or defect occurs and will actively assist HotelFriend in troubleshooting. After examining a defect report by the Client, if it turns out that the defect did not occur within the responsibility of HotelFriend, HotelFriend may charge the Client for the cost of testing for the error report at the prices valid at HotelFriend. This does not apply if the Client could not recognise, even with the necessary care, that the malfunction did not occur within the HotelFriend's area of responsibility.

4.9 During the use of the contractual software and the contractual performance, the Client will comply with all applicable laws and other legal regulations of the Federal Republic of Germany. In particular, the Client is prohibited from uploading data or contents that violate legal provisions, infringe third party protective or copyright laws or other rights of third parties. The Client is responsible for the data and contents he provides.

HotelFriend does not check the contents for their correctness, virus freedom or technical processability.

4.10 For own data backup, section 2.8 of this contract applies.

4.11 HotelFriend will hand over all data of the hotel to the Client within 30 days after the termination of the contract. For the handover of the data to the Client, the lump-sum compensation specified in the service description (Annex 2) is due. The lump sum compensation is to be set lower if the client can prove a lower spending.

4.12 If a third party asserts a legal violation due to data or content provided by the Client, HotelFriend is entitled to block the contents completely or temporarily if a justified doubt about the legality of the data and/or contents exists due to objective evidence. In such a case, HotelFriend shall urge the Client to cease the legal violation or prove the legality of the contents within a reasonable period. If the client does not comply with this request, HotelFriend is entitled to terminate the contract without notice for an important cause without further rights and claims being affected. Costs that HotelFriend incurs due to these measures may be charged to the Client at the price valid at HotelFriend. If the Client is responsible for the legal violation, he will compensate HotelFriend for the damage resulting from it.

4.13 Furthermore, the Client is obliged to provide all kind of cooperation services immediately and free of charge, in particular when HotelFriend requests him to do so and the necessary measures do not exceed a reasonable effort.

4.14 In case of a serious or other violation of his obligations from this contract by the Client as well as in case of repeated violations, HotelFriend is entitled to temporarily suspend the contractual services in whole or in part or to terminate the contractual relationship for an important reason

and without prior notice. Costs that HotelFriend incurs due to these measures can be charged to the Client at the prices valid at HotelFriend. If the Client is liable for the violation of the law, he is obliged to compensate HotelFriend for the damage resulting from it. Other rights remain reserved.

4.15 The Client grants HotelFriend the use of his own copyrighted and/or trademark-protected images and word marks in products, product presentations, and advertising materials. This applies in particular for the Client's presentation on the marketplace, SaaS products, as well as the websites of HotelFriend, printed advertising materials, social networks, studies, and other self-promotion. Deviating terms of use are to be indicated when delivering any texts and media, in particular image and word marks of the Client or third parties to HotelFriend.

5 Remuneration

5.1 For the use of the contractual software, the client pays the price agreed to in the order form. If HotelFriend provides further services not explicitly mentioned in this contract, the prices currently valid at HotelFriend apply. The price lists can be requested from HotelFriend at any time.

5.2 The client has to compensate for the use of the contractual software under the access data provided to him, even if it is carried out by unauthorised third parties. The requirement for HotelFriend's claim to compensation is the proof that the client is responsible for the use by the third party. The obligation to pay also exists if the client had a justified suspicion that the access data has become known to third parties and has not immediately informed HotelFriend. However, the client is not required to compensate for the use by unauthorised persons, if the usage act has occurred after the client has informed HotelFriend that the access data is known to third parties.

5.3 The agreed remuneration becomes due for payment according to the

conditions stated in the order form.
Other services become due after the service has been provided and the invoice has been received by the client.

5.4 All mentioned fees and prices are exclusive of the currently valid statutory sales tax. This will be charged additionally to the fee separately or regulated by the reverse-charge procedure.

5.5 The offsetting with counterclaims of the client or the retention of payments due to such claims is only permitted if the counterclaims are undisputed or have been legally established and are based on the same contractual relationship. The client can only assign his claims from this contract to third parties with the prior written consent of HotelFriend.

6 Default

6.1 During a payment delay of the client of more than two consecutive monthly fees, HotelFriend is entitled to block access to the contractual software during the delay in payment. The client remains obliged to pay the monthly prices and remunerations in this case.

6.2 If the client

6.2.1 falls behind with the payment of the contractually owed remuneration or a not insignificant part of the prices/remuneration for two consecutive months; or

6.2.2 falls behind with the payment of the fee in a period of more than two months, amounting to the fee for two months, HotelFriend is entitled to terminate the contract without notice and demand damages in the amount of the remuneration agreed upon up to the end of the regular contract term.

6.3 The amount of damages is to be set higher or lower if HotelFriend can prove a higher or the client can prove a lower damage.

6.4 HotelFriend reserves the right to assert further claims due to payment delays.

6.5 If HotelFriend is in delay with the operable provision of the contractual software, liability is governed by section 8. The client is only entitled to withdraw from the contract if HotelFriend does not adhere to a reasonable extension set by the client, which must be at least 2 weeks.

7 Changes of services

7.1 HotelFriend can change the service at any time in a manner reasonable for the client. The change is particularly reasonable if it becomes necessary for an important reason, such as disruption of the provision of services by subcontractors, and the service features, as described in the service description and user documentation, are still essentially fulfilled. HotelFriend will notify the client about the change in writing or by email at least six weeks before it comes into effect.

7.2 Irrespective of this, HotelFriend is always entitled to change or supplement its service offer or parts thereof. HotelFriend will announce the amendment or supplement to the client in writing or by email at least six weeks before it becomes effective. The client can object to the changes in writing or by email within two weeks of receipt of the amendment notification. If the client does not object, the changes and additions become part of the contract. HotelFriend will inform the client in the amendment notice about the effects of his behaviour. If the client objects to the change within the required time, HotelFriend may terminate the contract at the earliest possible time.

8 Liability for defects

8.1 Deviations from the services agreed to in the service description are considered poor performance, not non-performance. The corresponding warranty rights of the client are finally regulated in this section 8 and in section 9.2 of these GTC (reduction due to violation of third party protective rights). Warranty claims expire within one year of their occurrence. This does not apply to claims for damages. For defects in the contractual services,

HotelFriend is liable according to this section 8, as far as impairments do not depend on restrictions of availability.

8.2 HotelFriend provides the Services with due care and expertise, as well as in accordance with industry standards. However, HotelFriend does not guarantee that the Services are error-free and/or operate without any interruptions. The service description (Appendix 2) describes the measurable standards of the Services and the client's rights in cases where these standards are not met.

8.3 If the services to be provided by HotelFriend under this contract are defective, HotelFriend will, within a reasonable period of time and after receipt of a notice of defects, improve or re-render the services at its discretion. In the case of the use of third-party software which HotelFriend has licensed for use by the client, the warranty liability consists in obtaining and installing generally available upgrades, updates or service packs.

8.4 If the defective service fails due to reasons for which HotelFriend is responsible, even within a reasonable period set by the client, the client can reduce the agreed remuneration by a reasonable amount. The right to reduce is limited in terms of its amount to the defective part of the monthly fee that has been dropped.

8.5 If the reduction reaches the maximum amount stated in section 8.3 in two months of a quarter, the client can terminate the contract without notice.

8.6 The client will inform HotelFriend immediately in writing or by email of any defects that have occurred.

8.7 The client will support HotelFriend in eliminating defects to a reasonable extent free of charge and will in particular provide all necessary documents, data, etc. which HotelFriend needs to analyse and eliminate the defects.

8.8 Except for the explicitly mentioned claims and rights of the client due to defects in the contractual services in this section 8, no further and other claims and rights exist, unless HotelFriend is liable to a greater extent due to mandatory legal regulations.

9 Third party protective rights

9.1 If the client is legally condemned due to the use of the services provided by HotelFriend in accordance with the contract due to a violation of industrial protective rights and copyrights of third parties, HotelFriend indemnifies the client from these claims under the following conditions:

9.1.1 The client notifies HotelFriend immediately in text form, as soon as he has knowledge of the claims asserted against him, and

9.1.2 The client grants HotelFriend the control over all defense measures and settlement negotiations. In particular, the client will not make any judicial or extrajudicial acknowledgement of the claims of the third party, and

9.1.3 The client supports HotelFriend in an appropriate way in defending or settling the claims.

9.2 In addition to the indemnification obligation according to the previous section 9.1, HotelFriend is only obliged to compensate the client for the infringement of third party protective rights if HotelFriend is responsible for the infringement.

9.3 The client's rights according to this section 9 do not exist if the infringement of third-party protective rights results from the fact that the client

9.3.1 has carried out a change to the contractual services that has not been approved by HotelFriend in writing under this contract or otherwise,

9.3.2 has used the contractual services in a way other than for the purpose of this contract, or

9.3.3 has combined it with hardware or software that does not meet the requirements specified in the service description (Appendix 2).

10 Liability

10.1 HotelFriend is liable to the client in case of intent or gross negligence for all damages caused by it and its legal representatives or vicarious agents according to the statutory provisions. In case of slight negligence, HotelFriend is liable according to the statutory provisions in case of injury to life, body, health or freedom.

10.2 HotelFriend is only liable for slight negligent breaches of duty if HotelFriend has violated an essential contractual obligation (cardinal obligation). In these cases, liability is limited in both type and amount to compensation for the foreseeable, typically occurring damage. Cardinal obligations within the meaning of this regulation include in addition to the contractual main performance obligations also obligations whose fulfilment makes the proper execution of the contract at all possible and on whose compliance the client may regularly rely. This includes in particular the provision and availability of the services as well as careful handling of the client's data by HotelFriend.

10.3 For a single damage case according to section 10.2, the liability is limited to the amount of the paid remuneration per contract year. In the first contract year, the annual fee is calculated based on the offer.

10.4 The liability of HotelFriend for damage compensation regardless of fault (§ 536 a BGB) for defects existing at the time of contract conclusion is excluded. Sections 10.2 and 10.3 remain unaffected.

10.5 HotelFriend's liability under mandatory legal provisions such as the Product Liability Act remains unaffected.

10.6 In all other respects, HotelFriend's liability is excluded.

10.7 HotelFriend is exempt from the obligation to perform under the contract, if and insofar as the non-performance of services is due to the occurrence of force majeure after the conclusion of the contract.

11 Privacy and data security

11.1 The Parties will comply with the applicable, particularly the data protection regulations valid in Germany, and will oblige their employees involved in the context of the contract to confidentiality of data unless they are already generally obliged to do so.

11.2 The Parties will also comply with the provisions applicable to contract data processing and the data center and will take the necessary technical and organizational measures to protect personal data in the sense of § 9 BDSG.

11.3 If the Client collects, processes or uses personal data himself or through HotelFriend, he is responsible for ensuring that he is entitled to do so under the applicable, particularly data protection regulations and indemnifies HotelFriend from all claims by third parties in case of a violation.

11.4 It is clarified that the Client generally remains the "owner of the data" (§ 11 BDSG) both in terms of the contract and in terms of data protection. The Client is solely authorized regarding the disposal and ownership of all customer-specific data (input data, processed, stored data, output data). HotelFriend is only authorized to process and/or use the customer-specific data exclusively on the Client's instructions (e.g., to comply with deletion and blocking obligations) and within the context of this contract. In particular, HotelFriend is prohibited from making customer-specific data accessible to third parties in any way without the prior written consent of the Client.

11.5 The Client is not generally entitled to demand access to the premises with the contractual software and other system components. Unaffected by this are the access rights of the Client's

data protection officer after written registration to check compliance with the requirements according to the Agreement on Contract Data Processing (Appendix 3) and the otherwise lawful handling of personal data by HotelFriend within the framework of the operation of the contractual software under this contract.

11.6 The Parties will use all documents, information and data they receive for the execution of this contract and which are referred to them as confidential only for the execution of this contract and will treat them as confidential as long as and to the extent they are not generally known. The Parties are obliged to oblige their employees deployed in connection with the contract to secrecy of data in accordance with § 5 BDSG, as far as these are not already generally obliged accordingly. These obligations remain in effect for a further two years, calculated from the end of the contract.

11.7 HotelFriend can subcontract but has to impose a corresponding obligation on the subcontractor.

12 Contractual term; Termination

12.1 The minimum term of the contract ("minimum contractual term") is one (1) year. If a differing minimum term was agreed on the order form, this shall apply. The contract can be terminated by each party at the earliest at the end of the minimum term with a notice period of three (3) months. If the contract is not terminated as indicated in sentence 3, it will extend by another year ("extension period") and can then be terminated with a notice period of three (3) months at the end of the respective extension period. The extension continues until the contract is terminated. Upon renewal of the contract, the current versions of all annexes (in particular Annex 1 General Terms and Conditions, Annex 2 Service Description, and Annex 3 Data Processing Agreement) as published on the HotelFriend website at the time of renewal shall apply, provided that the

customer does not object in writing at least four (4) weeks prior to the end of the respective extension period.

12.2 The right to termination for cause remains unaffected. There is particularly an important reason for termination if:

12.2.1 One party breaches significant obligations or repeatedly non-significant obligations from the contract and does not eliminate the breach after being requested by the other party within an acceptable time frame, or

12.2.2 For one party, due to a higher power that has lasted longer than a week, adherence to the contract is not reasonable, or

12.2.3 An application for the opening of insolvency proceedings over the other party's assets has been made.

12.3 All terminations under this contract must be in writing to be effective.

12.4 Following the termination of the contractual relationship, for any reason, the Parties are obliged to properly settle the contractual relationship. Following the termination of the contract, the Client won't have access to the contractual software and the information contained therein. In particular, HotelFriend will

12.4.1 Provide the Client's data from the contract software in a common file format on a mobile data carrier or for download upon the Client's written request and against payment of the corresponding remuneration in accordance with the then-current price list. This does not include data that does not belong exclusively and solely to the Client.

12.4.2 Delete the Client's data immediately after written confirmation of successful transmission and destroy all made copies.

13 Force majeure

13.1 HotelFriend is released from its obligations under this contract if and insofar as the non-fulfillment of service can be attributed to the occurrence of force majeure or legal regulations after the contract has been concluded.

13.2 As circumstances of force majeure are, for example, wars, strikes, riots, expropriation, storm, flood and other natural disasters and other circumstances for which HotelFriend is not responsible (in particular water intrusion, power cuts and interruption or destruction of data-bearing lines). Legal regulations include temporary provisions to contain crisis situations, in particular pandemics.

13.3 Each party must notify the other party of the occurrence of a force majeure case immediately and in written form and inform the other party in the same way as soon as the force majeure event no longer exists.

14 Contract components

14.1 The components of the contract for the use of the internet-based hotel management software of HotelFriend Service GmbH are

14.1.1 Order form,

14.1.2 These terms and conditions (Annex 1),

14.1.3 the service description (Annex 2),

14.1.4 the Agreement on Contract Data Processing (Annex 3).

14.2 In the event of contradictions between the provisions in the contract components, the components apply in the order above.

15 Final provisions

15.1 All agreements that involve a change, supplement or concretization of these contract conditions as well as special assurances, guarantees and agreements are to be written down. Warranties are only to be qualified as guarantees in the legal sense if they are expressly referred to as a guarantee.

15.2 The parties can only transfer the rights and obligations from this contract with the prior written consent of the other party.

15.3 The parties agree on the application of the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods, for all legal relations resulting from this contractual relationship.

15.4 The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship between the parties is Berlin.

15.5 Should a regulation of this contract be or become invalid, this does not affect the validity of this contract in other respects. The parties are obligated within reasonable limits in good faith to replace the ineffective provision with a provision permissible and equivalent in its economic success, provided that no significant change in the content of the contract is brought about. The same applies if there should be a gap in these terms and conditions.

15.6 This Agreement has been translated using artificial intelligence. In case of any discrepancies or inconsistencies between the English version and the original German version of this Agreement, the provisions of the German version shall prevail.