

## **Cars by TUI Agent Agreement**

### **1. Definitions**

- 1.1 “Cars by TUI” means MicronNexus GmbH, Haus am Domplatz, Curienstrasse 2, 20095 Hamburg, registered in Hamburg, Germany, being a 100% subsidiary of TUI TRAVEL PLC, registered in England and Wales with registered office at TUI Travel House, Crawley Business Quarter, Fleming Way, Crawley, West Sussex RH10.
- 1.2 “Travelport Website” shall mean the website known as TravelportLeisure.com or any successor thereto offering an internet link to Cars by TUI’s reservation system (the “Link”) for the booking of car rentals and other related services. The Travelport Website is operated by Travelport LP for bookings made through the link in the United States or Canada and by Travelport Global Distributions System B.V. for bookings made through the link in any other country.
- 1.3 “Car Rental Services” means car rentals and other related services offered by Cars by TUI through the Link on the Travelport Website.
- 1.4 “Agent” is any registered Travelport subscriber using the Car Rental Services.
- 1.5 “Customer” shall mean any client of the Agent.
- 1.6 “Car Rental Company” means the rental company as vendor of the Car Rental Services to the Customer.
- 1.7 “Car Rental Contract” means the contract between the Customer and the Car Rental Company.

### **2. General**

- 2.1 By clicking on the “Register”-button on the Car Rental Services this legal distribution agreement is concluded between the Agent and Cars by TUI. At the same time, Agent agrees to have carefully read and to accept the terms and conditions set forth in this Agreement. Cars by TUI reserves its right to discontinue distribution of Car Rental Services through the Agent in case of noncompliance.
- 2.2 The Car Rental Services are only available to Agents for the distribution of car hire to end consumers. Cars by TUI may request and Agent shall provide evidence of Agent’s status as travel agent for end consumers at any time.
- 2.3 Cars by TUI is not a car hire company. Cars by TUI acts as an agent only allowing bookings between Agent’s Customers and the Car Rental Company. The Car Rental Contract is concluded between the Customer and the Car Rental Company. The Car Rental Contract is subject to the standard terms and conditions of the Car Rental Company. Special regulations or restrictions may apply to chosen prices, products or services. In this case the Customer will be advised accordingly prior to the confirmation of the reservation.
- 2.4 Cars by TUI and/or the Car Rental Companies may make modifications, upgrades and enhancements to the Car Rental Services without notice and without liability to Cars by TUI.
- 2.5 Cars by TUI advise that depending on the business and contractual arrangement between Cars by TUI and the Car Rental Company, (i)

certain products, content, services and technologies available to Cars by TUI may not be available for distribution to Agent/Customer, and/or (ii) certain products, content, services and technologies initially offered may be changed (enhanced, revised or deleted) or may no longer be available for distribution to Agent/Customer.

- 2.6 Agent shall be responsible for all post-purchase Customer communication whereas direct contact information for the service and support communication methods of the Car Rental Companies is transmitted via Cars by TUI.
- 2.7 Provided, however, if secondary post-purchase Customer support services are required (e.g. modifications to the travel services), Agent shall contact Cars by TUI via the "Customer Service" link on the Car Rental Services.

### **3. Cars by TUI's Obligations**

- 3.1 Upon Agent's acceptance by Cars by TUI to be an authorized user of the Car Rental Services, the agent can access Car Rental Services using the User ID and password provided at the time of registration.
- 3.2 The Agent and even the Customer may contact Cars by TUI for post-purchase Customer support. Cars by TUI shall have the right to communicate with the Customer for such purposes as conducting Customer service. Personal information of Customers shall be treated as Confidential Information as defined in Section 9.

### **4. Agent's Obligations**

- 4.1 Agent is obliged to offer Cars by TUI's Car Rental Services to end consumers only.
- 4.2 Agent shall inform each Customer that Agent will make booking arrangements via the Car Rental Services on behalf of the Car Rental Company.
- 4.3 Agent is obliged to advise any Customer explicitly and precisely that the Car Rental Contract is concluded between the Customer and the Car Rental Company subject to its standard terms and conditions and that special regulations or restrictions may apply to chosen prices, products or services of which the Customer will be advised accordingly prior to the confirmation of the reservation.
- 4.4 Agent shall make the Customer aware of the standard terms and conditions provided by the Car Rental Company and answer any questions the Customer may have.
- 4.5 Agent shall not manipulate or amend in any way the voucher for the Customer generated from the Cars by TUI system.

### **5. Commission**

- 5.1 For each booking generated by an Agent through the Link with a Car Rental Company, Cars by TUI will pay the Agent a commission of 10% (ten percent) of the commissionable amount to be paid by the Customer to the Car Rental Company provided that the Car Rental Services have not been cancelled, exchanged or refunded and are not the result of fraudulent or prohibited transactions.
- 5.2 Bookings as stated herein are defined as bookings which were confirmed by the Car Rental Company. Cars by TUI will track bookings of Car

Rental Services by Agent using Agent's User ID. Only these bookings are basis for calculation of the commission.

- 5.3 The commission payment is due 45 days following the end of each month in which the Net Booking was placed. A Net Booking shall be allocated to the month in which the first day's services in a booking are scheduled to commence. If Agent has not earned at least 100 Euro or equivalent in the Agent's local currency in the particular month, then Cars by TUI shall be entitled to transcribe the commission due to the following month until 100 Euro or equivalent are reached or six (6) months have passed, whichever occurs first, at which time Cars by TUI shall submit such commission to Agent.
- 5.4 The commission may be altered subject to prior agreement with Travelport for commercial reasons.
- 5.5 If the "no show rate" related to bookings through the Link exceeds 5% in a particular calendar month, Cars by TUI reserves its right to pay commissions for actual pickups only instead of bookings. In this case Cars by TUI will inform Agent in writing with a notice period of 30 days.
- 5.6 If the commission due is subject to VAT according to the applicable law, Cars by TUI will pay the commission plus VAT if Agent provides Cars by TUI with a valid tax invoice.
- 5.7 Agent shall be solely responsible for any and all taxes and/or other obligations associated with Agent's receipt or provision of services and/or commission hereunder.

## **6. Property Rights and Ownership**

- 6.1 Except for the rights and licenses expressly granted by Cars by TUI to Agent under this Agreement, Cars by TUI shall own and retain all rights, titles and interests in and to the Car Rental Services and all of Cars by TUI's content, including without limitation, Cars by TUI's trademarks, logos, trade names, service marks, text, graphics, links, documents, data and software available through the Car Rental Services, and all patent, trademark, copyright, trade secret and other intellectual property rights therein (collectively, the "Content").
- 6.2 Nothing contained in this Agreement shall be construed as conferring upon Agent, by implication, operation of law or otherwise, any other license or other right in or to the Content or the Car Rental Services.
- 6.3 Cars by TUI grants Agent a non-exclusive, non-transferable, revocable, limited license to access and use the Car Rental Services solely as necessary to perform its obligations under this Agreement. Agent shall not be entitled to grant sublicenses.
- 6.4 Agent shall not, and shall not assist, permit or authorize others to copy, reproduce by any means, access, modify, alter, adapt, decrypt, decompile, disassemble, reverse engineer, sell, lease, license, sublicense, assign, pledge, encumber, distribute, disclose, or otherwise transfer or retransmit the Content or the Car Rental Services, or access, view, create, derive or attempt to determine the source code of (or underlying ideas, algorithms, structure or organization of) the Content or the Car Rental Services or create, prepare or reproduce derivative works of or from the Content or the Car Rental Services, either in electronic or printed format.

- 6.5 Agent shall not, in the course of performance of this Agreement or thereafter, use Cars by TUI's name, marks, symbol, or other brand identifier in any advertising or promotional media without first receiving the prior written consent for such use from Cars by TUI.
- 6.6 Agent shall not remove, alter or conceal any copyright and/or trademark notices or other Content ownership or identification notices, warnings or restrictions.
- 6.7 Agent shall not perform any action, including, but not limited to, data mining or any similarly disruptive practice that is intended to or does interfere with the development, operation or maintenance of the Content or the Car Rental Services, or make any false representations related to the Cars by TUI, the Content or the Car Rental Services.

## **7. Disclaimer of Warranties**

- 7.1 Cars by TUI relies on the information from Car Rental Companies. Cars by TUI does not have the opportunity to check the correctness and/or completeness of this information. Cars by TUI does not warrant or make any representations regarding the correctness, reliability, completeness and/or currency of any information content and/or service whatsoever. Neither Cars by TUI warrants that its services will be uninterrupted or error-free and that defects will be corrected or that the server that makes the content available will be free of viruses or other harmful components.
- 7.2 Cars by TUI does not warrant and is not liable for the availability of the rental cars at the time of the reservation nor for the fulfilment of the Car Rental Contract.

## **8. Limitation of Liability**

- 8.1 Cars by TUI, its representatives, employees and vicarious agents (in the following provisions, together designated as "Cars by TUI") shall, regardless on which legal grounds, be liable exclusively in accordance with the following provisions.
- 8.2 Cars by TUI shall be liable neither for any interruptions or errors of the Link, nor for ensuring that the contents of the Car Rental Services are free of errors, omissions, defects or viruses, nor for the accuracy or legality of the contents. Cars by TUI shall not be liable for any loss of data.
- 8.3 Cars by TUI shall only be liable, regardless on which legal grounds, for actions arising from deliberate intent or gross negligence, except in the case of breach of fundamental contractual duties.
- 8.4 Except in the case of deliberate breach of contract, Cars by TUI shall not be liable for any loss of profit, loss of savings, indirect damage and/or consequential damage.
- 8.5 The liability of Cars by TUI shall, except in the case of deliberate breach of contract, be limited in any case to the damage reasonably foreseeable at the time of conclusion of the contract.
- 8.6 Liability on account of culpable injury to life, limb or health shall remain unaffected by the above-mentioned limitations of liability.

## **9. Confidentiality**

- 9.1 The Agent ensures to keep all data, documentation and information with regard to Cars by TUI, the Car Rental Services, this Agreement and its

fulfilment private, which are marked as “confidential” or which are identifiable as company secrets due to other circumstances, and may not record, use or forward such data, documentation or information to third parties, unless it is necessary for the fulfilment of this Agreement. The confidentiality clause includes this Agreement and the Appendices agreed upon. This clause remains valid after the termination of the Agreement.

- 9.2 The Agent is advised that Cars by TUI collects, processes and records personal data of the Agent and the Customer according to the German Federal Data Protection Act.

## **10. Term and Termination of the Agreement**

- 10.1 This Agreement shall be in full force and effect upon Cars by TUI's acceptance of Agent's application to become an Agent and shall end when terminated by either party.
- 10.2 Cars by TUI can terminate this Agreement at any time for any reason by providing written notice to Agent; Agent can terminate this Agreement at any time for any reason by providing 30 days prior written notice to Cars by TUI.
- 10.3 Upon termination of this Agreement, all licenses granted hereunder shall immediately terminate. Following termination, Cars by TUI reserves the right to withhold Agent's final remittance of commission for a reasonable time to ensure that the correct amount is paid.

## **11. Miscellaneous**

- 11.1 Agent may only exercise a right of set-off against claims of Cars by TUI if the counterclaim of the Agent is undisputed or has been judicially decided and is final and legally binding. The Agent may only assert a right of retention in so far as the same is based on claims arising from the same contractual relationship.
- 11.2 The failure of Cars by TUI to enforce or to exercise at any time or for any period any term of or any right pursuant to this Agreement shall not be construed as a waiver of any such term or right and shall in no way affect Cars by TUI's right later to enforce or exercise it.
- 11.3 The headings and titles contained in this Agreement are included for convenience only and shall not limit or otherwise affect the Agreement.
- 11.4 German Law shall apply, subject to the exclusion of the UN Convention on the International Sale of Goods. The place of performance shall be Hamburg.
- 11.5 Hamburg shall be the exclusive court venue.
- 11.6 Should individual provisions of this Agreement be or become unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from the other provisions and shall not affect the validity and enforceability of the remaining provisions. In place of the ineffective provision, a substitute arrangement shall apply which most closely corresponds to the purpose sought to be achieved with the ineffective provision.