

## General Terms and Conditions " Schmetterling Cooperation Agreement"

### 1. Scope of Validity "Schmetterling Cooperation Agreement"

- 1.1. The following provisions apply for agreements regarding the "Schmetterling Koo-Partnerschaft international" which are concluded between the travel agency partner ("Partner") and Schmetterling Reisen GmbH & Co. KG (hereinafter "Schmetterling"). The agreement shall be concluded between the Partner and Schmetterling.
- 1.2. Schmetterling is entitled to transfer existing agreements to newly established Schmetterling companies with their headquarters in the Partner's respective country. The Partner shall hereby give consent to such a transfer.
- 1.3. These General Terms and Conditions (T&Cs) shall apply for all agreements, on the basis of which Schmetterling incorporates the Partner as a cooperation partner and provides those services specified in the "Schmetterling Cooperation Agreement".
- 1.4. Contrary or deviating conditions of the Partner are not recognised, unless Schmetterling has explicitly approved the validity of such. This right to reserve approval shall apply in all cases, even if Schmetterling renders or accepts services in the knowledge of deviating T&Cs of the Partner.
- 1.5. Schmetterling is entitled to amend or expand these T&Cs as well as the respective commission and price lists contained therein, provided this does not affect any significant regulations of the contractual relationship, and provided this is necessary in order to adjust to developments which could not have been foreseen upon conclusion of the agreement and which would noticeably disrupt the balance of the contractual relationship if not taken into consideration. This may be the case in particular if laws or jurisprudence change, and if one or more clauses of these T&Cs are affected by this. The commissions list can be changed in particular if third parties, such as organisers, from whom Schmetterling procures necessary services, amend their list of services and accompanying commissions. The agreed commissions can be reduced or increased in order to balance out commissions. The Partner shall not be entitled to the following right of special termination in case of changes to commissions which do not exceed a justifiable extent. Increases are furthermore possible to the extent, to which VAT is increased. In this case, Schmetterling shall inform the partner in writing of the intended changes six weeks before these come into effect. The Partner shall be entitled to a right of special termination at the time of these changes coming into effect. If the Partner does not exercise its right of termination in writing within six weeks of receiving notification of changes, the agreement shall be continued under the amended conditions. These consequences shall be specifically referred to in the notification of changes sent to the Partner via the Schmetterling intranet (extranet).

### 2. Conclusion of contract

The Partner can issue agreement offers in writing or electronically. An agreement shall come into effect upon written acceptance on the part of Schmetterling.

### 3. Type and –scope of Schmetterling services

- 3.1. The scope of services of Schmetterling can be found in the signed contract form, a confirmation of these T&Cs, the respective commission and price lists of Schmetterling, as well as the commission and price lists of third-party providers which the Partner can obtain from the Schmetterling extranet. The commissions and prices applicable in each case shall be adjusted each year and published on the extranet.
- 3.2. Moreover, upon conclusion of the contract, the Partner shall receive an exclusive and non-transferable right, for the duration of the agreement only, to use those brands made available to it, not including the right to issue sub-licences. When using these brands, the Partner shall observe the conditions of use for the Schmetterling brands, accessible under [www.schmetterling.de](http://www.schmetterling.de). Upon signing the "Schmetterling Cooperation Agreement", the Partner accepts these conditions of use.
- 3.3. Schmetterling is entitled to make use of third parties for the rendering of its own services.

#### **4. Responsibilities and obligations of the orderer**

- 4.1. The Partner is obliged to refrain from any misuse of the services of Schmetterling. The licence of the brands covers only those stated in the agreement. This licence is granted to the Partner personally, and therefore cannot be transferred to a third party, either in whole or in part.
- 4.2. The Partner is obliged to use the services in accordance with regulations and within the framework of legal stipulations applicable in the Federal Republic of Germany. The Partner shall observe the following regulations in particular. The stipulations of national and international, copyrights, brand rights, patent rights, rights to bear a name, and trademark rights, as well as other commercial and intellectual property rights, personal rights of third parties, and the provisions of competition law and data protection laws shall be absolutely adhered to. The Partner shall indemnify Schmetterling of all justified claims which are submitted against Schmetterling by third parties due to a breach of these obligations, unless the Partner can provide evidence that it has not culpably caused the breach of obligations leading to these damages.

The Partner shall ensure that all obligations listed here are also adhered to by third parties which make legitimate use of the services covered by this agreement under the identity of the Partner, and shall furthermore be responsible for such.

Provided such is available in the respective country, the Partner is obliged to issue Schmetterling authorisation for direct debiting, or a SEPA direct debit mandate following the introduction of such, and to ensure sufficient coverage of the agreed direct debit account. With the introduction of the uniform European payment system, SEPA, the Partner shall immediately, upon request by Schmetterling, replace any existing authorisation for direct debiting with a SEPA-conform direct debit mandate (incl. BIC and IBAN) which shall be renewed by the Partner every 36 months upon the request of Schmetterling provided this is not in constant use during the contractual relationship. An earlier issuing of a SEPA mandate is permitted.

If this agreement is transferred to a new company according to Paragraph 1.2, the Partner shall undertake to issue this new company a new SEPA mandate.

The contracting parties shall undertake to process transactions with the diligence of an ordinary businessman. This shall also apply to auxiliary persons of the contracting parties.

#### **5. Changes of owner, changes to legal form, body of shareholders and power of representation**

- 5.1. The Partner shall inform Schmetterling immediately of an change of owner, changes to legal form or changes to the body of shareholders and power of representation of the Partner.
- 5.2. The contracting parties shall inform one another immediately in written form of any changes which are of significance for the execution and orderly fulfilment of the contract and affected agreements. Where there exists doubt regarding the issue of significance, information shall be forwarded as a precaution.
- 5.3. In case of a change of owner and continuation of business operations according to § 25 German Commercial Code (HGB), the previous Partner, together with the acquirer of the company, shall be liable for the receivables from this agreement, unless Schmetterling and the acquirer agree otherwise. The acquirer of the company shall be obliged to also assume the rights and obligations from this agreement and its accompanying appendices.

#### **6. Approvals, laws and ordinances**

Both parties assert that they have adhered to the statutes, regulations and stipulations of all regulatory bodies which have jurisdiction over their activities, and that they shall adhere to these at all times. Both contracting parties further guarantee that they shall acquire all necessary approvals and licences associated with the services in this agreement at their own expenses. The Partner hereby declares its agreement that its data be transferred to the central processing department of Schmetterling and/or third party service providers.

## 7. Protection of sales

- 7.1. Data which the Partner is aware of may not be passed on to third parties. This shall also apply after termination of this agreement.
- 7.2. The Partner is forbidden from conducting tourism business directly with other travel agency associations with the travel agency cooperation Quality Travel Alliance without the consent of Schmetterling. This shall also apply for 2 years after termination of this agreement.

## 8. Fees, invoicing and conditions of payment

The Partner declares its agreement that Schmetterling may collect, store and process the data received from the Partner regarding its person, its operations and other circumstances of relevance for the contractual relationship for the purposes of this agreement.

- 8.1 The Partner hereby declares its agreement that Schmetterling may pass on its data to third parties, such as the suppliers of the Schmetterling product range, marketing companies, and other persons from the business environment of Schmetterling, for the purposes of this agreement. This also includes, in particular, use of these data in connection with events organised by Schmetterling, such as annual conferences.
- 8.2 Schmetterling shall process and use personal data from this agreement only for the purposes of fulfilling the agreement, managing customers, performing market research and opinion surveys, and for its own advertising campaigns. By signing this agreement, the Partner grants Schmetterling the authority to save its personal data in its own data processing set-up, and to pass this on to a specific group of recipients pursuant to the Federal Data Protection Act (BDSG).
- 8.3 The contracting parties shall undertake to observe and abide by the relevant stipulations of data protection laws, and other relevant data protection provisions. They shall ensure that all employees and third parties entrusted by them with the fulfilling of this agreement shall also observe the legal stipulations of data protection.

## 9. Koop support

- 9.1. All technical queries can be submitted to [technologie@schmetterling.de](mailto:technologie@schmetterling.de). The automatic collection of queries in a ticket system guarantees a qualitatively high-quality processing of the queries. In order to help the Partner to localise a problem with the programme, Schmetterling can request that the Partner grant it remote access to its system, or send information or system data to Schmetterling.
- 9.2. All questions regarding bookings, options, cancellations etc. must be directed via the tourism booking centre only: tel. + 49 (0) 19 97 / 62 82 940 or via e-mail: [info@schmetterling-international.de](mailto:info@schmetterling-international.de)
- 9.3. We are available from Monday to Friday from 9:00 to 18:00 on + 49 (0) 19 97 / 62 82 630 or via e-mail: [koop@schmetterling.de](mailto:koop@schmetterling.de) for all other questions, problems and wishes.

## 10. Fees, invoicing and conditions of payment

- 10.1. Fees for the cooperation partnership / White Label can be found in the "Schmetterling Cooperation Agreement" contract form.
- 10.2. The fixed fee to be paid for the cooperation partnership in each case shall be payable for the rest of the calendar year and thereafter once a year in advance, starting with the day, upon which the contract is signed. Schmetterling shall compile an invoice for this purpose which the Partner shall pay within 14 days. All other services of Schmetterling, with the exception of services according to Paragraph 10.3., shall generally be invoiced monthly or annually for the previous month or calendar year. This includes, in particular, all usage-dependent services, as is made clear on the order form.

- 10.3. In case of tourism events, the price of travel, less the agreed commission, shall be debited or invoiced for travel agency cashing 4 weeks before the date of departure; this shall not be the case for an earlier printing (retrieval) of tickets, in which case this shall occur on the day of retrieval. Pre-payments shall be payable and debited or invoiced according to the regulations of the individual organiser. Advance payments shall remain unaffected. In case of customer direct collection, Schmetterling shall pay the agreed commission to the Partner after the start of travel, and after receipt and payment of the organiser account.
- 10.4. Invoices shall in principle be made available to the Partner online free of charge and in electronic form (hereinafter "online invoice"). The invoices can be viewed via the activated extranet. Upon uploading the invoice to the extranet, the online invoice shall be considered received. In individual cases, an invoice can be sent to the Partner in written form by post. Schmetterling shall make the invoices available free of charge, in accordance with VAT stipulations.
- 10.5. All remunerations shall be payable upon receipt of invoice. If the Partner has issued Schmetterling authorisation for direct debiting or a SEPA mandate, Schmetterling shall debit the invoice amount from the account of the Partner no earlier than 6 working days after receipt of the invoice. The Partner shall ensure sufficient coverage in the account which it has specified. Otherwise, the invoice amount must be credited to the account stated on the invoice no later than on the tenth day after receipt of the invoice. Funds managed on a trust basis, as well as other receivables of Schmetterling, shall also be collected via bank direct debit. The issuing of a SEPA company direct debit mandate for this direct debiting is obligatory as far as possible.
- 10.6. If the Partner has commissioned other services from Schmetterling, Schmetterling shall be entitled to issue the Partner a total invoice, provided the Partner has stated the same invoice address and authorised the debiting of invoice amounts from the same account for these services.
- 10.7. The Partner shall only be entitled to offset receivables of Schmetterling if its counter-claim is ascertained in an uncontested or legally effective manner.
- 10.8. Schmetterling is entitled to demand reimbursement of expenditure for any return debit note issued due to lack of coverage or due to the defaulting of the Partner or its bank. The amount of this expenditure is €25.00. The enforcing of damages beyond this shall remain unaffected, as shall the provision of proof of lesser damages by the Partner. Complaints, use by third parties

## 11. Intra-group offsetting clause

- 11.1. Schmetterling is entitled to offset and balance payable and non-payable receivables which the Partner owes to Schmetterling or a company, in which Schmetterling has a direct or indirect participation, or which the Partner owes to one of the companies. Upon request, and where necessary, the Partner shall receive information on the status of these participations. This shall only be issued by the management.
- 11.2. The Partner hereby agrees that all securities provided to Schmetterling shall also serve to hedge those receivables which the Partner owes to the companies listed above in Paragraph 1. Conversely, all securities which the Partner has provided to these companies, shall also serve to hedge those receivables demanded from the Partner by Schmetterling.

## 12. Complaints, use by third parties

- 12.1. If the Partner objects to the amount of remuneration stated in the invoice or to credit memos issued by Schmetterling, then it shall indicate this to the issue of the invoice in writing within eight weeks of receipt of the invoice/credit memo. It shall provide coherent justification for its objection. If the Partner allows this period to expire without action, the invoice/credit memo shall be considered approved.
- 12.2. Unless explicitly stipulated in the agreement, the Partner may not transfer the licences or access to, for example, framework agreements ("sub-bookings") granted it to third parties without the prior written consent of Schmetterling. Any unapproved transfer of use or sub-bookings shall entitle Schmetterling to terminate without notice following unsuccessful written warning.

## 13. Default in payment

- 13.1. The Partner shall default at the latest if it fails to pay within 30 days of the due date and receipt of an invoice or payment schedule of equal value, and these consequences shall be referred to specifically in the invoice or payment schedule. In the case of default in payment, a flat-rate expenditure fee for processing of €25.00 shall be payable.
- 13.2. Schmetterling is entitled to realise a security provided by the Partner (Germany only) if the partner enter into default for a payment. If Schmetterling utilises this security, the Partner shall be obliged to immediately replace the amount deducted from the original if the agreement is to continue.
- 13.3. In the case of default in payment on the part of the Partner, Schmetterling shall be entitled to assess the credit worthiness of the Partner. If there exists doubt as to the credit worthiness of the Partner, Schmetterling can demand appropriate securities.
- 13.4. Moreover, a block shall be considered according to Paragraph 14 in case of default in payment.

#### **14. Blocks, sanctions**

- 14.1. Schmetterling can implement the following measures if there exists concrete evidence that a Partner is breaching legal stipulations, the rights of third parties, regulations of the cooperation agreement, or the Schmetterling principles, or if Schmetterling has another justified interest, in particular in the protection of the service providers or other partners:
  - Conversion of payment methods (travel agency cashing/advance payment)
  - Warning of partners
  - Restriction of range of products available from specific organisers or other service providers
  - Temporary block on individual or all organisers
  - Irrevocable block on individual or all organisers
- 14.2. When selecting a measure, Schmetterling shall take into consideration the justified interests of the affected Partner, in particular regarding whether there exists evidence that the user has not culpably committed the breach.
- 14.3. Schmetterling can exclude a Partner with ultimate effect from booking services from individual or all providers (irrevocable block) and deny the Partner the use of its brands if
  - the Partner repeatedly makes negative statements about Schmetterling or Schmetterling partners
  - the Partner has given false contact details
  - the the Partner passes on its extranet account or grants third parties access to this
  - the Partner damages Schmetterling or Schmetterling partners to a significant degree
  - the Partner repeatedly breaches the T&Cs or Schmetterling principles
  - other good cause exists.

14.4. The conditions of use are referred to regarding the use of brands.

## **15. Liability, force majeure**

- 15.1. If there exists an obligation on the part of Schmetterling to reimburse a partner for damages to assets, and this is not based on wilful intent, liability shall be limited to 3 times the agreed annual amount.
- 15.2. For material damages and asset damages not covered by 15.1., Schmetterling shall be liable to an unlimited extent in case of wilful intent or gross negligence. Moreover, Schmetterling shall only be liable in case of culpable breach of such obligations, the fulfilment of which is required for the orderly execution of the agreement, and the adherence to which the Partner should be able to regularly rely on, wherein the liability shall be restricted to reimbursement for foreseeable damages typical for the agreement.
- 15.3. The liability restrictions shall not apply in cases of mandatory legal liability, in particular for fatalities, physical injuries or damage to health according to the Product Liability Act (Produkthaftungsgesetz), upon acceptance of a guarantee for the conditions of the services or in case of fraudulent intent.
- 15.4. The Partner shall not be liable for damages which result from impermissible actions on the part of cooperation partners. Schmetterling shall bear the resulting costs with regards to the damaged party, and shall demand reimbursement of these from the affected partners. (e.g. cancelled bookings and bookings, for which the registered traveller does not turn up, customer deposits etc.)
- 15.5. If restrictions on or cancellations of services are the result of force majeure, Schmetterling shall be released from its services for the corresponding period, without the Partner being able to infer claims from such. Force majeure is defined as all unforeseeable and unavoidable hindrances to services which Schmetterling cannot be held accountable for and which lie outside of the sphere of influence of Schmetterling. These events include in particular acts of nature, fire, industrial action - including at third parties - and any interruption in electricity supply and power issues.

## 16. Agreement period, termination

- 16.1. The agreement period is defined according to the Koop partner agreement (Paragraph 10 of the agreement).
- 16.2. Notice of termination shall be given in writing.
- 16.3. This shall not affect the right of extraordinary termination of both parties for good cause. For Schmetterling, good cause shall be deemed present in particular if the Partner ceases its payments or becomes insolvent, if a credit check reveals a negative result, if the Partner defaults for two consecutive months on the payment of a not insignificant amount of the fee owed or for a period longer than two months on an amount which corresponds to the average fees owed for two months, or if the Partner commits a serious breach of its contractual obligations. If Schmetterling defaults on a payment owed, the Partner shall only be entitled to terminate the agreement if Schmetterling does not adhere to a grace period set by the Partner of at least ten working days.
- 16.4. If Schmetterling terminates the contractual relationship with the partner for good cause which the Partner can be held accountable for, then Schmetterling shall have claim to flat-rate damage compensation to the amount of those lost commissions which would have been payable on the part of the Partner at the time of the extraordinary termination coming into effect; the partner is entitled to provide evidence that no damages have arisen for Schmetterling or that these damages are lower than the flat rate.

## 17. Credit check and provision of a security

- 17.1. If there exists justified doubt regarding the credit worthiness of the Partner, prior to conclusion of the contract, because the information collected provides grounds to expect that the enforcing of receivables against the Partner will be associated with significant difficulties, in particular because the Partner is in arrears with obligations from other (existing or previous) agreements, or because such agreements were not executed properly, or because comparable cases exist, then Schmetterling can demand the provision of an appropriate security in the form of an interest-bearing deposit or absolute guaranty from a credit institute located in the EU, and may limit access to its services to that extent if the Partner does not provide the security or does not provide such to an appropriate amount, or if the security provided does not offer sufficient protection against losses of receivables (e.g. if the Partner has issued an affidavit or has failed to satisfy the request for the issue of such) or if there exists other serious cause, e.g. the Partner as made incorrect statements or there exists serious suspicion that the Partner will misuse or intends to misuse the services. A security provided shall where applicable be released upon termination of the contractual relationship, provided the Partner has settled all receivables of Schmetterling.
- 17.2. Schmetterling is entitled to charge a provision of a security against such receivables which the Partner fails to settle despite their maturity and a warning.
- 17.3. Schmetterling shall guarantee the return of a security, provided the above circumstances no longer exist. No return of a loss compensation security shall be guaranteed.

## 18. Information bureaus

- 18.1. Schmetterling is entitled to collect information from credit bureaus within the context of a credit check. Schmetterling is further entitled to pass on to credit bureaus the data of the partner necessary for collection on the grounds of a transaction which does not conform to the agreement (e.g. court order issued for uncontested receivable, enforcement order issued, debt enforcement measures). If, during the partner relationship, an information bureau obtains such data from other partner relationship, then Schmetterling may also obtain information on this. The respective transfer and storage of data shall be performed within the framework of legal data protection provisions and only to the extent that it is necessary to guarantee the justified interests of Schmetterling, a contracting party of the credit bureau, or the general public, and provided this does not negatively affect those interests of the Partner which are to be protected.

## 19. Other / severability clause

- 19.1. Place of jurisdiction is the local or district court allocated to the headquarters of Schmetterling, as far as permissible.
- 19.2. The law of the Federal Republic of Germany shall apply exclusively for all legal relationships between Schmetterling and the Partner. International private law shall not apply.

- 19.3. The Partner is not entitled to relinquish, transfer or pledge all or one of the rights, services and obligations in this agreement without the prior written consent of Schmetterling. Schmetterling is entitled to transfer rights and obligations from this agreement to third parties for the fulfilment of the agreement.
- 19.4. If any provisions of this contract are or become ineffective, this does not affect the effectiveness of the remaining provisions of this agreement. The contracting parties shall undertake to replace ineffective provisions with new provisions which satisfy the regulations of the ineffective provisions in a legally permissible manner and which most closely reflect the financial aim of these. The same shall apply accordingly for loopholes in the agreement. The contracting parties shall undertake to resolve omissions by inserting terms which most closely reflect what the contracting parties would have agreed according to the sense and purpose of this agreement, had they been aware of these at the time. All prices are understood to be inclusive of the applicable VAT in each case.