

TERMS AND CONDITIONS FOR HOLIDAY LETS AND COMMERCIAL CLIENTS

PEBBLES OF SALCOMBE LIMITED

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions in this clause apply to these Terms:
- a. Force Majeure Event: shall have the meaning given in clause 9.
 - b. Order: your order for the Services.
 - c. Order Confirmation: shall have the meaning set out in clause 2.5(b).
 - d. Services: the services that we are providing to you as set out in the Order.
 - e. Terms: the terms and conditions set out in this document.
 - f. We/us: Pebbles of Salcombe LTD (CRN: 06545400)
 - g. Writing or written: includes faxes and e-mail.
 - h. You: the person or firm who purchases services from us.
- 1.2 Headings do not affect the interpretation of these Terms.

2. BASIS OF SALE

- 2.1
- (a) We consider these Terms, the Order and our price list to set out the whole agreement between you and us for the supply of the Services. These Terms only apply to our contracts with holiday let and commercial customers.
 - (b) Please check that the details in these Terms and on the Order are complete and accurate before you commit yourself to the contract. If you think that there is a mistake, please make sure that you ask us to confirm any changes in writing, as we only accept responsibility for statements and representations made in writing by our authorised employees and agents.
 - (c) Please ensure that you read and understand these Terms before you sign and return the Order, because you will be bound by the Terms once a contract comes into existence between us, in accordance with *clause 2.5*.
- 2.2 Any samples, drawings, descriptions or advertising we issue, and any descriptions or illustrations contained in our catalogues or brochures, are issued or published solely to provide you with an approximate idea of the Services they describe. They do not form part of the contract between you and us or any other contract between you and us for the supply of the Services.
- 2.3 If any of these Terms are inconsistent with any term of the Order, the Order shall prevail.
- 2.4 The Order is an offer by you to enter into a binding contract with us, which we are free to accept or decline at our absolute discretion.

2.5 These Terms shall become binding on you and us when:

- (a) we issue you with written acceptance of an Order; or
- (b) we notify you that we are able to provide the Services,

whichever is the earlier, at which point a contract shall come into existence between us.

2.6 Any quotation for the Services is given on the basis that a binding contract shall only come into existence in accordance with *clause* 2.5 A quotation from us shall be valid for a period of 56 calendar days from its date of issue, unless we notify you in writing that we have withdrawn it during this period.

2.7 You may within 28 calendar days of placing an Order amend or cancel an Order by providing us with written notice. If you amend or cancel an Order, your liability to us shall be limited to payment to us of all costs we reasonably incur in fulfilling the Order until we receive your amendment or cancellation. However, where the amendment or cancellation is due to our failure to comply with these Terms you shall have no liability to us for it. Save as provided in clauses 12.1 and 12.2 a Contract is not otherwise capable of termination before the end of the minimum term specified in the Order relating to it.

2.8 We have the right to revise and amend these Terms from time to time to reflect changes in market conditions affecting our business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in our system's capabilities. You will be subject to the policies and terms in force at the time that you order the Services from us, unless any change to those policies or these Terms is required by law or government or regulatory authority in which case it will apply to orders you have previously placed that we have not yet fulfilled. If the services are ongoing, we will give you prior notice of any changes to these Terms.

2.9 These Terms apply to the order to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. QUALITY OF SERVICES

3.1 We shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2 We shall use all reasonable endeavours to meet any performance dates specified in the order.

3.3 We shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially

affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.4 We warrant to the Customer that the Services will be provided using reasonable care and skill.

3.5 You are responsible for keeping and maintaining valid buildings and contents insurance of your property.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Supplier, its employees, agents, consultants and sub-contractors in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's property and other facilities as reasonably required by the Supplier;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's property for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (g) It is your responsibility that the Customer's property complies with all relevant regulations including but not limited to fire risk assessments, PAT testing and gas safety certificates at all relevant times. If you require assistance complying with this clause, please contact us.
- (h) Ensure that all appropriate and valid insurance policies are held at the Customer's property and workplace, including but not limited to buildings and contents and marine insurance.
- (i) Nominate one individual as the sole point of contact with the Supplier and ensure that, save in cases of emergency, only that individual gives instructions to the Supplier.
- (j) Notify the Supplier through the Supplier's on-line portal or such other means as are agreed with the Supplier of the dates on which the Property is occupied or undergoing work.

4.2 If our performance of any of its obligations under the order is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) We shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the

Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays our performance of any of its obligations;

- (b) We shall not be liable for any costs or losses sustained or incurred by the Customer or their guests arising directly or indirectly from our failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) The Customer shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.

5. PROVISION OF SERVICES

- 5.1 We will supply the Services to you from the date set out in the Order.
- 5.2 We will make every effort to complete the Services on time but there may be delays due to circumstances beyond our control. In this case we will complete the Services as soon as reasonably possible.
- 5.3 We may have to suspend the Services if we have to deal with technical problems, or to make improvements to the Service. We will let you know in advance where this occurs, unless the problem is urgent or an emergency.

6. DEFECTIVE SERVICES

- 6.1 In the unlikely event that the Services do not conform with these Terms, please let us know as soon as possible after we have carried them out. We will:
 - (a) Re-perform the Services; or
 - (b) provide you with a full or partial refund ,depending on what is reasonable;
- 6.2 These Terms will apply to any replacement Services we supply to you.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The copyright, design right and all other intellectual property rights in any materials and other documents or items that we prepare or produce for you in connection with the Services will belong to us absolutely.
- 7.2 You may not use the materials, documents or other items detailed in *clause 0* for any commercial purpose.

8. PRICE AND PAYMENT

- 8.1 The following definitions shall apply in this clause:

Review Date: any date from which we are entitled to increase our prices in line with the CPI.

Review Period: a period beginning on any Review Date and ending on the day before the next Review Date.

‘CPI’ means the Consumer Price Index maintained and published by the Office of National Statistics.

- 8.2 The price of the Services will be as set out in the quotation we provided to you or, if we have not provided a quotation or the quotation has expired, in our price list in force at the time we confirm your Order.
- 8.3 Prices will be subject to review on the Review Date (the Review Date will be the anniversary of the Commencement Date of the Service and each anniversary thereafter.
- 8.4 The prices for any Review Period is to be determined by us and notified in writing to you not less than one month prior to the relevant review date.
- 8.5 Notwithstanding clause 8.3 and 8.4 we reserve the right to increase prices, provided that such prices cannot be increased more than once in any [] month period. We will give you written notice of any such increase one month before the proposed date of the increase. [If such increase is not acceptable to you, you shall notify us in writing within 2 weeks of the date of our notice and we shall have the right without limiting our other rights and remedies to terminate the contract.
- 8.2 These prices exclude VAT. However, if the rate of VAT changes between the date of the Order and the date of delivery, we will adjust the VAT you pay, unless you have already paid for the Services in full before the change in the rate of VAT takes effect.
- 8.3 We may invoice you for the Services as agreed in the Order. You must pay the invoice in cleared monies within the time period set out in the Order.
- 8.4 If you do not make any payment due to us by the due date for payment (as set out in *clause 8.5*), we will charge you a late payment fee of £20, in addition, we may charge interest to you on the overdue amount at the rate of 5% a year above the base lending rate of Lloyds TSB from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with the overdue amount.
- 8.5 Without limiting any other remedies or rights that we may have, if you do not pay us on time, we may cancel or suspend our performance of the Services or any other outstanding Order until you have paid the outstanding amounts.

- 8.6 *clause 8.4 and clause 8.5 shall not apply for the period of the dispute if you dispute the payment owing in good faith and let us know within 7 days after you have received the invoice that you dispute it.*
- 8.7 You may be required to pay a 75% deposit for any order over £400 for an individual service item as set out on your Order. You will be invoiced for the remainder on completion of the service as set out on your Order.

9. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 9 shall survive termination of the Contract.

10. LIMITATION OF LIABILITY

- 10.1 Nothing in these Conditions shall limit or exclude our liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 10.2 Subject to clause 10.1:
- the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the contract including any losses that may result from a deliberate breach of the contract by us, its employees, agents or subcontractors; and
- (k) our total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by our deliberate breach of the contract by us or our employees, shall not exceed £1,000,000.

- 10.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.4 We are not responsible or liable for contractors, such as plumbers or electricians who you may engage from time to time. If you request us to instruct a contractor, their fee will be payable as a disbursement on your invoice and you will be charged an arrangement fee in accordance with the Order, which will be payable on your next invoice.
- 10.5 This clause 10 shall survive termination of the contract.

11. EVENTS OUTSIDE OUR CONTROL

- 11.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by events outside our reasonable control (Force Majeure Event).
- 11.2 A Force Majeure Event includes any act, event, non-occurrence, omission or accident beyond our reasonable control and includes, in particular (without limitation), the following:
- (a) strikes, lock-outs or other industrial action; or
 - (b) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; or
 - (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; or
 - (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; or
 - (e) impossibility of the use of public or private telecommunications networks.
- 11.3 Our obligations under these Terms are suspended for the period that the Force Majeure Event continues, and we will extend the time to perform these obligations for the duration of that period. We will take reasonable steps to bring the Force Majeure Event to a close or to find a solution by which our obligations under these Terms can be performed despite the Force Majeure Event.

12. TERMINATION

- 12.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing,

in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (b) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (g) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(a) to clause 12.1(h) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

12.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

12.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract after the expiry of the minimum term stated in the Order by giving the other party 30 calendar days written notice.

12.4 Without limiting its other rights or remedies, we shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and us if the Customer becomes subject to any of the events listed in this

clause 12 or we reasonably believe that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

13. CONSEQUENCES OF TERMINATION

13.1 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to us all of our outstanding unpaid invoices late payment fees and interest and, in respect of Services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of our materials and any deliverables which have not been fully paid for. If the Customer fails to do so, then we may enter the Customer's property and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13.2 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

13.4 We are not responsible or liable for contractors, such as plumbers or electricians who you may engage from time to time. If you request us to instruct a contractor, their fee will be payable as a disbursement on your invoice and you will be charged an arrangement fee in accordance with the Order, which will be payable on your next invoice.

14. ASSIGNMENT AND SUBCONTRACTING

14.1 You may not assign, subcontract or transfer any of your rights or obligations under these Terms to another person without our prior written consent, which we will not withhold unreasonably.

14.2 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

15. NOTICES

All notices sent by you to us must be sent to Pebbles of Salcombe Limited at Brewery Quay, Island Street, Salcombe, Devon, TQ8 8DP. We may give notice to you at either the e-mail or postal address you provide to us in the Order. Notice will be deemed received and properly served 24 hours after an e-mail is sent or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that the e-mail was sent to the specified e-mail address of the addressee.

16. DATA PROTECTION

- 16.1 We will only use the personal information you provide to us to provide the Services, or to inform you about similar services, unless you tell us that you do not want to receive this information.

17. GENERAL

- 17.1 If any court or competent authority decides that any of the provisions of these Terms are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.
- 17.2 If we fail, at any time while these Terms are in force, to insist that you perform any of your obligations under these Terms, or if we do not exercise any of our rights or remedies under these Terms, that will not mean that we have waived such rights or remedies and will not mean that you do not have to comply with those obligations. If we do waive a default by you, that will not mean that we will automatically waive any subsequent default by you. No waiver by us of any of these Terms shall be effective unless we expressly say that it is a waiver and we tell you so in writing.
- 17.3 A person who is not party to these Terms shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.
- 17.4 These Terms shall be governed by English law and you and we both agree to the non-exclusive jurisdiction of the English courts.
- 17.5 Waiver:
- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
 - (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

17.6 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17.7 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

17.8 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

17.9 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

17.10 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.