

scubawhereRMS Terms & Conditions

Version 2, 13th March 2017

The legal terms and conditions on this page ("**Terms**") apply between SCUBAWHERE LIMITED ("**we**", "**our**") and diving operators, diving schools and dive centres ("**you**", "**your**") wishing to use our online platform made available at <http://rms.scubawhere.com> ("**Website**") seeking to manage diving holidays, trips, courses and other related experiences ("**Experiences**").

If you choose to proceed with registration, you will be treated as having accepted these Terms. If you do not accept these Terms, you must not proceed any further. Your continued use of the services made available through our Website will also be treated as your continuing acceptance of these Terms.

We may amend these Terms from time to time and notify you when this has happened. However you should regularly check this page to ensure that you understand the terms on which we operate at any time. The current version and date of these Terms is displayed at the top of this page.

These Terms are only available in the English language. If you use any page translation service, you accept that the English language version of this page will apply in the event of any disputes.

1. Information about us

We are SCUBAWHERE LIMITED, a limited company incorporated and registered in England and Wales under company number 09115053. Our registered office is located at 54 Wallshut Wood, Stoke Gifford, Bristol, BS16 1GL.

2. Experience bookings and reservation management

- a. Upon completion of the registration process, you will be given a user name and password to access our reservation management system ("RMS"). Once you have logged into the RMS for the first time, you will be prompted to add your business details, create your profile, declare your VAT/GST business number (if applicable), upload your terms and conditions and provide details of the Experiences that you are able to offer.
- b. You are solely responsible for the accuracy, quality, completeness, reliability, truthfulness and credibility of the Experiences posted by you. Subject to paragraph 7, we shall not exercise any editorial control over the Experiences posted by you, nor shall we be liable for any misrepresentation made by you.
- c. You agree that all contracts for Experiences booked through our the RMS will be entered into directly between you and the Customer in accordance with the terms and conditions added by you when creating your online profile. In this regard, we will not

have any authority to bind you to any contract with a Customer and we will have no liability whatsoever in respect of any costs, expenses, liabilities (including any tax liability), injuries, direct, indirect and consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and/or legal costs incurred or suffered by you and/or the Customer under or in connection with any agreement between you and the Customer, including any act or omission of a Customer.

- d. If you wish to provide or are required by law to provide your Customers with a right of cancellation, this must be included within your terms and conditions and must be no less favourable than the cancellation terms you provide elsewhere. We do not accept any liability whatsoever to you or any Customer in respect of cancellations.

3. Availability of the Website & RMS

- a. We agree to use our commercially reasonable endeavours to make the Website available twenty four (24) hours a day, seven (7) days a week, except for:
 - i. planned maintenance which has been notified to you by email in advance; and
 - ii. unplanned or emergency maintenance which is necessary to remedy any security vulnerability or defect which is preventing or impairing access to or the performance of the Website and/or RMS (we will attempt to give you as much notice of such maintenance as possible).
- b. You are responsible for making all arrangements necessary for you to have access to our Website. We do not guarantee that our Website (or any content on it) or the RMS will always be available or be uninterrupted.
- c. We will use our commercially reasonable endeavours to remedy any technical defects with the Website and/or RMS promptly, upon being notified of such defects by you.

4. Content restrictions and acceptable use

- a. You warrant that you will:
 - i. comply with all applicable laws and regulations with respect to your use of the Website and RMS;
 - ii. not use our Website in any way that is or fraudulent or has any fraudulent or deceiving purpose or effect;
 - iii. not access, store, distribute or transmit any viruses (being any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or

network, any telecommunications service, equipment or network or any other service or device) via the Website or RMS;

- iv. not post or make available any content via the Website which directly or indirectly discriminates or victimises against any individual on the basis of race, sex, religion, nationality, disability, sexual orientation or age or on any other grounds;
 - v. not post or make available any content via the Website that infringes any copyright, database right, trade mark or other intellectual property rights of any other person;
 - vi. not transmit, or allow to be transmitted, the sending of any unsolicited or unauthorised advertising or promotional communications or any other form of similar solicitation (spam);
 - vii. not post or make available any content via the Website which is otherwise unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; and
 - viii. not disparage, bring into disrepute and/or speak detrimentally of scubawhere or cause and/or carry out any activities that may caused damage to the scubawhere brand, reputation, goodwill, business or relationships with anyone else.
- b. You and each of your employees, workers and sub-contractors who have been assigned user accounts must treat user names and passwords as confidential and not disclose them to any third party. We have the right to disable any user name and/or password at any time if, in our reasonable opinion, you have failed to comply with this paragraph or any of these Terms. If you know or suspect that anyone other than you knows your user name and/or password, you must promptly notify us at accounts@scubawhere.com.
- c. Failure to comply with paragraphs 7a or 7b constitutes a material breach of these Terms and may result in our taking all or any of the following actions (without liability to you and at our absolute discretion):
- i. immediate, temporary or permanent withdrawal of your right to use our Website;
 - ii. immediate, temporary or permanent removal or any Experiences or any posting or material uploaded by you to our Website;
 - iii. issue a warning to you;
 - iv. commence legal proceedings against you for reimbursement of all our costs on an indemnity basis (including, without limitation, reasonable administrative and legal costs) resulting from your breach;

- v. pursue further legal action against you; and/or
- vi. disclose such information to law enforcement or regulatory authorities as we reasonable feel is necessary.

5. Intellectual property

- a. You expressly agree to grant us a non-exclusive, world-wide, royalty-free licence to use, reproduce, publicly display (via our Website or otherwise), distribute, syndicate and otherwise share:
 - i. any Experiences posted by you via the RMS;
 - ii. your name, logo (whether registered or unregistered) and any images uploaded by you to the Website in conjunction with advertising and marketing the Experiences listed by you (including via any online or offline advertising networks and platforms); and
 - iii. any other details, information or media (including, without limitation, audio, video or multimedia content) provided or uploaded by you to our Website and/or RMS.
- b. Subject to paragraph 5a, all right, title and interest in and to your trade marks (whether registered or unregistered) and any other intellectual property rights subsisting in the materials uploaded by you shall be and remain your exclusive property.
- c. We are the owner of licensee of all intellectual property rights in our Website and the RMS and any material published on it (other than materials published by you). Those works are protected by copyright laws and treaties all around the world and all such rights are reserved.
- d. All intellectual property rights “scubawhere”, its logos and associated artwork, design, slogans, text and other collateral marketing signs shall remain our exclusive property. We agree to grant you a non-exclusive, non-transferable right to use the scubawhere “badge” (which you can download or embed on your website through the RMS) on your own website. You must not represent our brand
- e. You warrant that you shall not attempt, or permit anyone to attempt, to reverse engineer, decompile or otherwise reduce to human-readable form all or any part of the Website or RMS for the purpose of developing a product or service which competes with the Website and/or RMS developed by us or to provide services to third parties similar those that we provide to you. You further agree not to licence, sell, rent, lease, transfer, assign, distribute, display, disclose or otherwise commercially exploit or make available the Website and/or RMS to any third party.

6. Data

- a. scubawhere shall own all right, title and interest in and to all technical data collected by scubawhere via the Website and RMS and to all data inputted by you or any Customer to the extent that such data does not consist of Personal Data.
- b. You acknowledge and agree that scubawhere will be a Data Processor and you will be a Data Controller to the extent that any Personal Data are Processed in connection with the services provided by scubawhere under these Terms. scubawhere agrees that it will:
 - i. only Process Personal Data in accordance with terms of this Agreement and any lawful instructions given by you;
 - ii. not use, disclose or reproduce Personal Data in whole or in part in any form except as may be required under these Terms, with your prior written consent or as may be required by law; and
 - iii. take all reasonable technical and organisational measures to safeguard against the unauthorised or unlawful Processing of or access to Personal Data or its accidental loss, destruction or damage.
- c. Nothing in this clause shall prevent or restrict scubawhere from Processing Personal Data for any purposes referred to in the Privacy & Cookies Policy.
- d. Each of us agrees to notify the other of any complaint, notice or request relating directly or indirectly to the Processing of Personal Data and to provide the other with full co-operation and assistance in relation to the same.
- e. In this clause, “Data Controller”, “Data Processor”, “Personal Data” and “Processing” have the meanings given to them in the UK Data Protection Act 1998.

7. Your liability to us

You agree to fully indemnify and hold us harmless against all claims, liabilities, damages, losses, expenses, refunds, fines, costs (including legal costs on a full indemnity basis) and all other sums of whatever nature which we incur, suffer or become responsible for directly or indirectly as a result of your breach of these Terms or in respect of any claim brought by a Customer against you in relation to any Experiences booked through our Website where such claim relates to your negligent acts or omissions or those of you, your employees, workers, agents or sub-contractors. This indemnity will survive and remain in full force and effect after the termination (for whatever reason) or expiry of the agreement between us as expressed in these Terms.

8. Our liability to you

- a. To the extent permitted by law, we exclude all conditions, warranties, representations or other terms which may apply to our Website or any content on it, whether express or implied.
- b. Nothing in these Terms attempts to exclude or limit any liability for death or personal injury arising from our negligence, or our fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited by the law of England and Wales.
- c. Both we and our officers, directors, employees, shareholders or agents of any of them, exclude all liability and responsibility for any amount or kind of loss or damage that may result to you or a third party (including without limitation, any direct, indirect, punitive or consequential loss or damages, or any loss of income, profits, goodwill, data, contracts, use of money, or loss or damages arising from or connected in any way to business interruption, and whether in tort (including without limitation negligence), contract or otherwise) in connection with your use of our Website in any way or in connection with the use, inability to use or the results of use of the Website, any websites linked to the Website or the material on such websites, including but not limited to loss or damage due to viruses that may infect your computer equipment, software, data or other property on account of your access to, use of, or browsing the Website or your downloading of any material from the Website or any websites linked to the Website.
- d. Subject to paragraphs 10b and 10c, our total aggregate liability to you shall not in any circumstances exceed the total amount of any Commission received by us in respect of bookings taken for your Experiences in the twelve (12) month period before we are given notice of any claim.

9. Duration and termination

- a. The agreement between us as set out in these Terms shall continue for a minimum period of twelve (12) months ("Minimum Term").
- b. Upon expiry of the Minimum Term, you may terminate your agreement with us at any time by giving one month's notice. This notice may be given by emailing us at accounts@scubawhere.com.
- c. Without affecting our other rights of termination, we may terminate our agreement with you at any time on giving you one month's notice.
- d. Without affecting our other rights of termination, we may terminate our agreement with you immediately on giving notice to you in the following circumstances:
 - i. you commit a material breach of these Terms which, if we consider such breach is capable of being remedied, you have failed to resolve within five (5) days' of our notice that you have materially breached any of these Terms; or

- ii. any event occurs in any jurisdiction to which you are subject whereby you become, or notice is given that you intend to become, bankrupt or insolvent; enter into administration or receivership; suspend or threaten to suspend payment of your debts; or enter into a compromise or arrangement to pay your debts.
- e. Following termination, you agree to remove any scubawhere widgets embedded on your website and remove all references to scubawhere on your promotional materials.

10. General terms

- a. **Anti-corruption:** We take a zero tolerance approach towards bribery and corruption. You warrant that you (and your employees, contractors, agents or subsidiaries) shall comply with all applicable local and international anti-corruption legislation and related procedures and codes from time to time in force, including but not limited to the United States of America Foreign Corrupt Practices Act 1977 and the United Kingdom Bribery Act 2010. You shall provide supporting evidence of such compliance as we shall reasonably request. Violation of this clause by you shall be a material breach of these Terms and may result in the immediate termination of our agreement with you and/or legal action.
- b. **Force majeure:** We shall have no liability to you under these Terms if we are prevented from or delayed in performing our obligations under these Terms, or from carrying on our business, by any acts, events, omissions or accidents beyond our reasonable control (including, without limitation, failure of a telecommunications network, act of God, compliance with any law or governmental order, rule, regulation or direction or the default of our sub-contractors), provided that we notify you of such event and its expected duration.
- c. **Notices:** Any notices which are required to give us under these Terms should be sent by email to accounts@scubawhere.com. Any notices that we are required to give you under these Terms may be given by email or notified to you via the RMS.
- d. **Severance:** Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.
- e. **Assignment:** We may transfer our rights and obligations under these Terms to another organisation, but this will not affect your rights or our obligations under these Terms. You may only transfer your rights or your obligations under these Terms to another person if we agree in writing.
- f. **Third parties:** The agreement set out in these Terms is between you and us only. No other person shall have any rights to enforce any of its terms.
- g. **Waiver:** If we fail to insist that you perform any of your obligations under these Terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not

mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

- h. **Interpretation:** Headings are included for convenience only and shall not be considered in interpreting these Terms. In these Terms the singular shall include the plural and vice versa. Any references to “writing” or “written” include email but not fax. Any words following the terms “include” or “including” or any similar expressions are illustrative only and shall not limit the sense of the words preceding those words.
- i. **Applicable law and disputes:** Any dispute or claim arising out of or in connection with these Terms (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales. Any disputes and claims shall be finally resolved by arbitration under the London Court of International Arbitration’s (LCIA) Rules by a sole arbitrator appointed in accordance with those rules. It is agreed that the seat of the arbitration shall be London and the language of the arbitration shall be English.