

Boutiq - Mobile Applications and Website Terms and Conditions of Use

1. About the Application

- 1.1. Welcome to Boutiq. These terms and conditions apply to all digital platforms, websites and applications managed by us (the '**Application**'). The Application provides you with an opportunity to browse places, reviews, comments, status, as well as make bookings (either directly or via third parties), post reviews and upload photos and listings in respect of travel and hospitality destinations, activities and businesses.
- 1.2. The Application is operated by BOUTIQ PTY LTD (ACN 614 790 635) C/- Fishburners, 608 Harris St, Ultimo NSW 2007 ('**Boutiq**'). Access to and use of the Application is provided by Boutiq. Please read these terms and conditions (the '**Terms**') carefully. By using, browsing and/or reading the Application, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Application, or any of the Booking Services, immediately.
- 1.3. Boutiq reserves the right to review and change any of the Terms by updating this page at its sole discretion. When Boutiq updates the Terms, it will use reasonable endeavours to provide you with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of the Terms for your records.
- 1.4. The Application may also facilitate interactions between:
 - (a) social users who contribute and use the Application (the '**Member**'); and
 - (b) businesses who use the Application for the purpose of promoting and facilitating bookings and offers through the Application (the '**Provider**'),making it easier for the Member and the Provider to locate, communicate, arrange payment and deliver products and services in a fast and secure manner (the '**Booking Services**').

2. Acceptance of the Terms

You accept the Terms by using or browsing the Application. You may also accept the Terms by clicking to accept or agree to the Terms where this option is made available to you by Boutiq in the user interface.

3. Provider Terms

Providers' use of the Application may be subject to additional terms and conditions provided by Boutiq from time to time.

4. Registration

- 4.1. In order to contribute to and engage on the Application and to transact the Booking Services using the Application, both the Member and the Provider are required to register for an account through the Application (the '**Account**').
- 4.2. As part of the registration process, or as part of your continued use of the Application, you may be required to provide personal information about yourself (such as identification or contact details), including:
 - (a) first and last name;
 - (b) an email address;
 - (c) preferred username;
 - (d) a mailing address;
 - (e) a telephone number;
 - (f) a password (which will not be visible to Boutiq).
- 4.3. You warrant that any information you give to Boutiq in the course of completing the registration process will always be accurate, correct and up to date.
- 4.4. Once you have completed the registration process, you will be a registered user of the Application and agree to be bound by the Terms.
- 4.5. You may not use the Application and transact the Booking Services and may not accept the Terms if:
 - (a) you are not of legal age to form a binding contract with Boutiq; or
 - (b) you are a person barred from receiving the Booking Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Booking Services.

5. Third Party Service

- 5.1. You may be able to register an Account through the Application by using a log in associated with third party services ("**TPS**") (e.g. Facebook and other social media platforms).
- 5.2. Boutiq does not guarantee the availability or ability of users to access the Application using TPS.

- 5.3. As part of the functionality of the Application you may connect your profile with a TPS by:
 - (a) providing the TPS login information to Boutiq through the Application; or
 - (b) allowing Boutiq to access your TPS in accordance with its terms and conditions of service.
- 5.4. You may disconnect the connection between the Application and the TPS at any time.
- 5.5. Where you connect and or register a profile using a TPS, you authorize Boutiq to use data from that TPS to create your profile on the Application.
- 5.6. Boutiq has no relationship with any TPS and cannot guarantee the efficacy of any TPS connection.

6. Your obligations as a user

- 6.1. As a user of the Application, you agree to comply with the following:
 - (a) you will use the Application and transact the Booking Services only for purposes that are permitted by:
 - (i) the Terms; and
 - (ii) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions;
 - (b) you have sole responsibility for protecting the confidentiality of your password and/or email address. Use of your password by any other person may result in the immediate suspension or cancellation of your Account;
 - (c) any use of your registration information by any other person, or third parties, is strictly prohibited. You agree to immediately notify Boutiq of any unauthorised use of your password or email address or any breach of security of which you have become aware;
 - (d) you must not expressly or impliedly impersonate another user or use the profile or password of another user at any time;
 - (e) any content that you broadcast, publish, upload, transmit, post or distribute on the Application ('**Your Content**') will always be accurate, correct and up to date and you will maintain reasonable records of Your Content.
 - (f) you agree not to harass, impersonate, stalk, threaten another user of the Application (where interaction with other users is made available to you);
 - (g) you agree not to broadcast, publish, upload, transmit, post or distribute on the Application abusive or objectionable content, including but not limited to discriminatory, racists, pornographic, threatening or abusive material.
 - (h) access and use of the Application is limited, non-transferable and allows for the sole use of the Application by you;
 - (i) you will not use the Application in connection with any commercial endeavours except those that are specifically endorsed or approved by Boutiq;
 - (j) you will not use the Application for any illegal and/or unauthorised use which includes collecting email addresses of users by electronic or other means for the purpose of sending unsolicited email or unauthorised framing of or linking to the Application;
 - (k) you agree that commercial advertisements, affiliate links and other forms of solicitation may be removed from user profiles without notice and may result in termination of your Account. Appropriate legal action will be taken by Boutiq for any illegal or unauthorised use of the Application; and
 - (l) you acknowledge and agree that any automated use of the Application or its Booking Services is prohibited.

7. Using the Application

Users may access the Application and:

- 7.1. search the Application in respect of travel and hospitality destinations, activities and businesses;
- 7.2. post content and engage with Members and Providers in respect of travel and hospitality destinations, activities and businesses;
- 7.3. visit profile pages of Members and Providers;
- 7.4. transact between Members and Providers in respect of Booking Services as available from time to time.

8. Payments

Unless expressly stated in the Application, Boutiq does not process payments between Members and Providers. If Boutiq elects to process payments in the future, those payments will be handled by a third party payment processor and subject to any additional terms posted on the Application.

9. Refund Policy

- 9.1. Since Boutiq is only a facilitator in introducing the Member to the Provider and providing a system to make safe payment, Boutiq does not hold any liability to the Member directly and will not personally refund them any payments made in respect of Booking Services.
- 9.2. Notwithstanding the above clause, if a Member is unsatisfied with the services provided by the Provider or believes that they may be entitled to a refund, then Boutiq requires the Member to:
 - (a) contact the Provider directly to request a refund; and
 - (b) if contacting the Provider is not successful after fourteen (14) days, contact Boutiq through the 'Contact Us' section of the Application outlining why you believe you are entitled to a refund so we are able to determine if the Provider should be removed from the Application.

10. Copyright and Intellectual Property

- 10.1. The Application, the Booking Services and all of the related products and services of Boutiq are subject to copyright. The material on the Application is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in connection with the compilation of the Application (including but not limited to text, graphics, logos, button icons, video images, audio clips, Application, code, scripts, design elements and interactive features) are owned or controlled for these purposes, and are reserved by Boutiq and other lawful owners of intellectual property (including users).
- 10.2. All trademarks, service marks and trade names are owned, registered and/or licensed by Boutiq, who grants to you a worldwide, non-exclusive, royalty-free, revocable license whilst you are a user to:
 - (a) use the Application pursuant to the Terms;
 - (b) copy and store the Application and the material contained in the Application in your device's cache memory; and
 - (c) print pages from the Application for your own personal and non-commercial use.

Boutiq does not grant you any other rights whatsoever in relation to the Application or the Booking Services. All other rights are expressly reserved by Boutiq.

- 10.3. Boutiq retains all rights, title and interest in and to the Application. Nothing you do on or in relation to the Application will transfer any:
 - (a) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
 - (b) a right to use or exploit a business name, trading name, domain name, trade mark or industrial design, or
 - (c) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process),to you.
- 10.4. You may not, without the prior written permission of Boutiq (such permission is implied if the functionality of the Application allows) and the permission of any other relevant rights owners broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Application or third party Booking Services for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Application which are freely available for re-use or are in the public domain.
- 10.5. Where you broadcast, publish, upload, transmit, post or distribute Your Content on the Application, then you grant to Boutiq a non-exclusive, non-transferrable, perpetual, royalty-free, irrevocable, worldwide licence to broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public Your Content.
- 10.6. Despite clause 10.5, nothing in these Terms prevents you from deleting or requesting Boutiq to delete Your Content from the Application, in which case Boutiq will use its reasonable endeavours to delete and remove Your Content.
- 10.7. Boutiq reserves the right to delete Your Content from the Application at its discretion. You are responsible for maintaining suitable back-ups of Your Content.
- 10.8. You agree to release, indemnify and hold Boutiq harmless for any loss, damage, cost or expense that Boutiq may suffer or incur as a result of or in connection with Your Content transmitted, posted, distributed, shown or played in connection with the Application.

11. Privacy

Boutiq takes your privacy seriously and any information provided through your use of the Application and/or Booking Services are subject to Boutiq's Privacy Policy, which is available via the Application.

12. General Disclaimer

- 12.1. Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- 12.2. Subject to this clause, and to the extent permitted by law:
 - (a) all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded; and
 - (b) Boutiq we will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Application or these Terms (including as a result of not being able to use the Application or the Booking Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- 12.3. Everything on the Application is provided to you "as is" and "as available" without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors and licensors of Boutiq make any express or implied representation or warranty about the Application, the Booking Services or any products or services (including the products or services of Boutiq) referred to on the Application. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:
 - (a) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
 - (b) the accuracy, suitability or currency of any information on the Application, the Booking Services, or any of its related products and services (including third party material and advertisements on the Application);
 - (c) costs incurred as a result of you using the Application, the Booking Services or any products and services of Boutiq; and
 - (d) the Booking Services or operation in respect to links which are provided for your convenience.
- 12.4. You acknowledge that Boutiq only facilitates the interactions between the Member and the Provider and holds no liability to you as a result of any conduct of users in respect of the Booking Services.

13. Competitors

If you are in the business of providing similar products and services for the purpose of providing them to users for a commercial gain, whether business users or domestic users, then you are a competitor of Boutiq. Competitors are not permitted to use or access any information or content on our Application. If you breach this provision, Boutiq will hold you fully responsible for any loss that we may sustain and hold you accountable for all profits that you might make from such a breach.

14. Limitation of Liability

- 14.1. Boutiq's total liability arising out of or in connection with the Application or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the resupply of the Application to you.
- 14.2. You expressly understand and agree that Boutiq, its affiliates, employees, agents, contributors and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.
- 14.3. You acknowledge and agree that Boutiq holds no liability for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you as a result of providing Your Content to the Application.

15. Termination of Contract

- 15.1. If you want to terminate the Terms, you may do so by providing Boutiq with notice of your intention to terminate by sending notice of your intention to terminate to Boutiq via the 'Contact Us' link on our homepage.
- 15.2. Boutiq may at any time, terminate the Terms:

- (a) at its discretion;
 - (b) if you have breached any provision of the Terms or intend to breach any provision;
 - (c) if Boutiq is required to do so by law;
 - (d) if Boutiq is transitioning to no longer providing the Application to users in the country in which you are resident or from which you use the service.
- 15.3. Subject to local applicable laws, Boutiq reserves the right to discontinue or cancel your membership at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Application without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts Boutiq's name or reputation or violates the rights of those of another party.
- 15.4. When the Terms come to an end, all of the legal rights, obligations and liabilities that you and Boutiq have benefited from, been subject to (or which have accrued over time whilst the Terms have been in force) or which are expressed to continue indefinitely, shall be unaffected by this cessation, and the provisions of this clause shall continue to apply to such rights, obligations and liabilities indefinitely.

16. Indemnity

- 16.1. You agree to indemnify Boutiq, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:
- (a) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with Your Content;
 - (b) any direct or indirect consequences of you accessing, using or transacting on the Application or attempts to do so; and/or
 - (c) any breach of the Terms.

17. Dispute Resolution

17.1. Compulsory:

If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sort).

17.2. Notice:

A party to the Terms claiming a dispute ('**Dispute**') has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

17.3. Resolution:

On receipt of that notice ('**Notice**') by that other party, the parties to the Terms ('**Parties**') must:

- (a) Within 10 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
- (b) If for any reason whatsoever, 10 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the Chair of the Resolution Institute (ABN 69 008 651 232);
- (c) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;
- (d) The mediation will be held in Sydney, Australia.

17.4. Confidential

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

17.5. Termination of Mediation:

If 8 hours have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

18. Venue and Jurisdiction

In the event of any dispute arising out of or in relation to the Application, you agree that the exclusive venue for resolving any dispute shall be in the courts of New South Wales, Australia.

19. Governing Law

The Terms are governed by the laws of New South Wales, Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of New South Wales, Australia, without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

20. Independent Legal Advice

Both parties confirm and declare that the provisions of the Terms are fair and reasonable and both parties having taken the opportunity to obtain independent legal advice and declare the Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

21. Severance

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.