

# Terms & Conditions

## Adaptation to the amendment to the Consumer Protection Act, Federal Law Gazette 247/93 and to the Warranty Right Amending Law, Federal Law Gazette I No. 48/2001

Jointly discussed in the consumer-political advisory body of the Federal Minister for Health, Sports and Consumer Protection in accordance with § 73 subsection 1 of the Trade, Commerce, and Industry Regulation Act 1994 [Gewerbeordnung] and § 8 of the regulation of the Federal Minister for economic affairs in the version dated 1994 on the provisions regarding the exercise of the travel agency industry [Ausübungsvorschriften für das Reisebürogewerbe] (now § 6, according to Federal Law Gazette II No. 401/98).

The travel agency may act as agent (section A) and/or as tour operator (section B). The **agent** accepts the obligation to make an effort to provide an entitlement for services of other parties (operators, carriers, hoteliers, etc.). **Tour operator** is the company either offering several touristic services at a package price (package holiday/travel organisation) or promising to render individual touristic services as services on own account and for this purpose usually providing own brochures, advertisements, etc.

If third party services are arranged (e.g. optional trips at the holiday resort), a company acting as tour operator may also act as agent if it refers to this function as agent. The following conditions constitute the contractual text usually used by travel agencies as agents (section A) or as tour operators (section B) to conclude contracts with their customers/travellers (annotation: in the sense of the Consumer Protection Act).

### The special conditions

- of the arranged tour operators,
- of the arranged carriers (e.g. train, bus, airplane and ship) and
- the other arranged service providers **prevail**.

### A. THE TRAVEL AGENCY ACTING AS AGENT

The following conditions are the bases of the contract (agent's contract) concluded between customers and an agent.

#### 1. Booking/contract conclusion

The booking can be effected in writing, per telephone or verbally. The travel agency should immediately confirm verbal bookings or bookings per telephone in writing.

Travel agencies should use booking notes containing all necessary details regarding the customer's order and referring to the travel advertisement (catalogue, brochure, etc.) forming the basis of the booking.

With regard to its own services or arranged services, the agent must – according to § 6 of the provisions regarding the exercise of the travel agency industry – refer to these applicable GENERAL TRAVEL TERMS AND CONDITIONS. In case of differing travel terms and conditions, he must demonstrably advise the customer of these differences and hand them out before contract conclusion.

If services of foreign contractors (service providers, tour operators) are arranged, foreign law may apply as well.

Whoever completes a booking for himself or for a third party, is regarded as principal contractor and in default of differing declarations, accepts the obligations under the contract awarded towards the travel agency (payments, contract cancellation, etc.).

In the booking, the travel agency may request a service charge and a (minimum) deposit. Both the balance and the compensation of cash expenses (telephone expenses, fax costs, etc.) become due upon the hand-over of the travel documents (these do not include personnel documents) of the respective tour operator or service provider at the travel agency.

Upon or immediately after the contract conclusion, travel organisations accepting bookings are obliged to communicate a confirmation regarding the travel contract to the traveller (travel confirmation).

#### 2. Information and other incidental services

##### 2.1 Information on passport, visa, foreign currency, customs and health Regulations

It is commonly known, that a valid passport is needed for travels abroad.

Additionally the travel agency must inform the customer about the corresponding foreign passport, visa and health entry provisions and – upon request – about foreign currency and customs regulations if they can be obtained in Austria. The customer himself is responsible for compliance with these regulations. If possible, the travel agency will – against compensation – take charge of the provision of a visa that might be necessary. Upon request, the travel agency will - if possible - give information about special regulations for foreigners, stateless persons as well as persons holding a double citizenship.

##### 2.2 Information regarding the travel service

The travel agency is obliged to present the service of the tour operator or the service provider to the best of its knowledge in consideration of the characteristics of the arranged contract and the circumstances in the respective country or destination.

#### 3. Legal status and liability

The travel agency's liability covers

- the thorough selection of the respective tour operator and/or service provider as well as the thorough analysis of gained experience;
- the unobjectionable provision of services including the corresponding information of the customer and the delivery of the travel documents;
- the demonstrable forwarding of notices, declarations of intent and payments between the customer and the procured company and vice versa (like e.g. of changes in the agreed service and the agreed price, notices of cancellation, complaints).

The travel agency will not be liable for the provision of the service procured and/or obtained by it.

Together with the travel confirmation, the travel agency must notify the customer about the company name (product name), the address of the tour operator and – if applicable – of an insurer if this information is not already contained in the brochure, catalogue or other detailed means of advertising. If it does not do so, it is liable towards the customer as operator and/or service provider.

#### 4. Impairments of performance

If the travel agency violates the duties incumbent on it under the contractual relationship, it is obliged to compensate the customer the resulting damage unless it proves that it has neither acted intentionally nor in a grossly negligent way.

For breaches of contract due to slight negligence, the travel agency is obliged to compensate the customer the resulting damage up to the amount of the commission of the procured business.

### B. THE TRAVEL AGENCY AS TOUR OPERATOR

The following conditions are the bases of the contract – hereinafter referred to as travel contract – concluded between the booking party and a tour operator either directly or through an agent. In case of a direct conclusion, the agent's obligations analogously apply to the tour operator.

The tour operator generally accepts the applicable GENERAL TRAVEL TERMS AND CONDITIONS, deviations are highlighted in all its detailed advertising documents according to § 6 of the provisions regarding the exercise of the travel agency industry.

#### 1. Booking/contract conclusion

The travel contract is concluded between the booking party and the tour operator if there is an agreement regarding the material parts of the contract (price, service and date). This results in rights and duties for the customer.

## **2. Change in the person of the traveller**

A change in the person of the traveller is possible if the replacing person meets all conditions regarding the participation and can be completed in two ways.

### **2.1 Assignment of the claim to the travel service**

The booking party's obligations under the travel contract remain effective if it assigns all or single claims under this contract to a third party. In this case, the booking party will bear the resulting additional costs.

### **2.2 Transfer of the travel event**

Where the customer is prevented from proceeding with the package, he may transfer his booking to another person. The tour operator must be informed about the transfer either directly or via the agent within a reasonable period before the departure date. The tour operator may notify a specific period in advance. The transferring party and the replacing person will be jointly liable for both the unbalanced remuneration and the additional costs arising from the transfer.

## **3. Contents of the contract, information and other incidental services**

Exceeding the duty to inform also applicable to the agent (namely information on passport, visa, foreign currency, customs and health entry regulations), the tour operator must provide sufficient information about the service offered. The service descriptions in the catalogue and/or brochure valid at the time of the booking as well as the other information contained therein are the subject matter of the travel contract, unless differing agreements have been made at the booking. It is, however, recommended to record such agreements in writing.

## **4. Travels including special risks**

If travels include special risks (e.g. expeditions), the tour operator will not be liable for the consequences of risks outside of his scope of duty. The tour operator's obligation to thoroughly prepare the journey and to thoroughly select the persons and companies commissioned with the provision of the single travel services remains unaffected.

## **5. Legal bases in case of impairments of performance**

### **5.1 Warranty**

If the service has not been rendered or only been rendered imperfectly, the customer has a right to claim.

The customer agrees that instead of his claim to conversion or price reduction, the tour operator will – within a reasonable period – provide an unobjectionable service or improve the imperfect service.

Remedy can take place by removing the failure or by providing an equal or better replacement service that is subject to the customer's explicit consent.

### **5.2 Compensation**

If the tour operator or his assistants violate the duties of the contractual relationship either intentional or by negligence, the tour operator is obliged to compensate the damage.

To the extent, the tour operator is responsible for other persons than his employees, he will only be liable – except in cases of personal injury – if he does not prove that they have acted in an intentional or grossly negligent way.

Except in case of intention or gross negligence, the tour operator will not be liable for objects that are usually not brought along unless he has taken these objects in custody knowing the circumstances.

The customer is therefore advised not to carry along objects of special value. Moreover, it is recommended to orderly keep the objects that have been brought along.

### **5.3 Notification of failures**

The customer must immediately inform the tour operators representatives of every failure in the performance of the contract that he locates during the journey. This implies that the customer has been notified about a representative and that the latter is available on site without considerable efforts.

If this notification is omitted, this will not affect the customer's right to claim described under 5.1. This omission can, however, be imputed to him as contributory negligence and thus decrease his possible claims for damages. In this respect it is, however, necessary that the operator has informed the customer about this duty of notification in writing, either directly or via the agent. Equally, the customer must have been notified at the same time that any omission regarding this notification will not affect his right to claim, that it can, however, be imputed as contributory negligence.

If applicable and for lack of a local representative, it is recommended to either inform the respective service provider (e.g. hotel, airline) or the tour operator himself about failures and to request remedy.

### **5.4 Special liability laws**

Regarding flights, the tour operator will – inter alia – be liable under the Warsaw Convention and its additional conventions, in journeys by train and bus under the Railway and Motor Vehicle Liability Law.

## **6. Assertion of possible claims**

In order to simplify the assertion of claims, the customer is advised to obtain a written confirmation regarding the non provision of services or improper performance respectively to secure receipts, evidences and witnesses.

Consumer warranty claims can be asserted within 2 years.

Claims for damages will become time-barred after 3 years.

In the interest of the traveller, it is recommended to immediately assert claims after having returned from the journey directly at the tour operator or via the procuring travel agency as upon an increasing delay, difficulties regarding the evidence have to be anticipated.

## **7. Cancellation of the contract**

### **7.1 Cancellation on the part of the customer before the beginning of the Journey**

#### **a) Cancellation without cancellation fees**

Apart from the legally granted cancellation rights, the customer may – without the operator having claims against him - cancel the contract if the following cases occur before the beginning of the service:

If material components of the contract including the travel price are changed to a considerable extent.

The frustration of the conditioned purpose and/or character of the travel event as well as an increase in the agreed travel price by more than 10% effected according to section 8.1 will in each case constitute such contract modification.

The tour operator is obliged to immediately notify the customer the contract modification either directly or via the procuring travel agency and to simultaneously instruct him regarding the existing option to either accept the contract modification or the cancel the contract; the customer must immediately exercise his option.

If the operator is responsible for the occurrence of the event entitling the customer to the cancellation, the operator is obliged to compensate the customer's damages.

#### **b) Claim to replacement services**

If he does not make use of the cancellation possibilities according to letter a) and in case of cancellation by the tour operator without the customer's fault, the customer may – instead of the contract rescission – request the contract performance by means of the participation in any other equal journey if the operator is able to provide this service.

Apart from the right to the option, the customer is also entitled to a claim for damages due to non-performance of the contract, unless the cases of 7.2 take effect.

#### **c) Cancellation with cancellation fees**

The cancellation fee is a percentage of the travel price and with regard to its amount, depends on the time of the notice of cancellation and the respective type of journey. The travel price or the package price is the overall price of the contractually agreed service.

In all cases not mentioned under letter a), the customer is – against payment of a cancellation fee – entitled to cancel the contract. In case the cancellation fees are not reasonable, they can be abated by court.

Depending on the type of journey, the following cancellation rates result per person:

1. Special flights (charter), group IT (group package tours using regular service), motor-bus

group excursions (journeys lasting several days)  
until 30 days prior to departure.....10%  
29 to 20 days prior to departure.....25%  
19 to 10 days prior to departure.....50%  
9 to 4 days prior to departure .....65%  
as of 3 days (72 hours) prior to departure .....85%  
of the travel price.

2. Individual IT (individual package tours using regular service), train group excursions (except for special trains)

until 30 days prior to departure .....10%  
29 to 20 days prior to departure .....15%  
19 to 10 days prior to departure.....20%  
9 to 4 days prior to departure .....30%  
as of 3 days (72 hours) prior to departure.....45%  
of the travel price. Special conditions apply for hotel accommodation, holiday flats, ship travels, one-day bus travels, special trains and scheduled flights at special tariffs. The latter are to be listed in the detailed program.

#### **Notice of cancellation**

When cancelling the contract, you have to note the following:

The customer (principal) may inform the travel agency at which the travel has been booked at any time that he will cancel the contract. In case of cancellation, it is recommended to do this

- by registered letter or
- personally, with a simultaneous written declaration.

#### **d) No show**

No show means if the customer does not appear for the departure, whether he does not want to travel or if he misses the departure for any negligence for which he is responsible or for any coincidence that happens to him. If it has been clarified that the customer cannot or does not want to make use of the remaining travel service, he must pay according to the type of journey 85% of the package price (e.g. special flights) and respectively 45% of the package price (e.g. individual IT). If the rates mentioned above are not reasonable, they can be abated by court in the special case.

#### **7.2 Cancellation by the tour operator prior to departure**

a) The tour operator will be released from the contract if a minimum number of participants specified in the advertisement is not achieved and if the customer has been notified about the cancellation in writing within the following periods or those mentioned in the travel description:

- until 20 days prior to departure in journeys of more than 6 days,
- until 7 days prior to departure in journeys of 2 to 6 days,
- until 48 hours prior to departure in day trips.

If the operator is responsible for the non-achievement of the minimum number of participants to an extent exceeding slight negligence, the customer is entitled to request compensation. This compensation is limited by the amount of the cancellation fee. The assertion of any damage exceeding this amount is, however, not excluded.

b) The cancellation is based on force majeure, i.e. due to exceptional and unforeseeable events that cannot be influenced by the party referring to force majeure and the consequences of which couldn't have been avoided despite applying the necessary care. This does, however, not include overbooking, but it includes governmental orders, strikes, war or situations similar to war, epidemics, natural disasters, etc.

c) In cases of letters a) and b), the customer will be compensated the deposited amount. He is entitled to the option according to 7.1.b, 1st paragraph.

#### **7.3 Cancellation on the part of the tour operator after the beginning of the journey**

The tour operator is released from the contract performance if within the scope of a group travel, the customer lastingly and despite a warning disturbs the travel performance by grossly improper behaviour.

If it was the customer's fault, the customer is obliged to compensate the tour operator for the damage he has incurred.

### **8. Changes in the contract**

#### **8.1 Price revisions**

The tour operator reserves the right to increase the travel price confirmed in the booking for reasons not depending on his will if the period between the conclusion of the contract and the departure is longer than two months. Such reasons only include changes in the transportation costs, e.g. the fuel costs, the dues, taxes or fees chargeable for certain services, like landing taxes, embarkation and disembarkation fees in harbours and corresponding fees on airports or the exchange rates to be applied to the particular package.

In case of a price reduction for these reasons, it must be passed on to the traveller.

Within the two-month period, price increases may only be effected if the reasons for this have been separately negotiated in the booking and stated on the booking note.

During the 20 days prior to the departure date stipulated, the price stated in the contract shall not be increased.

A price revision is only admissible if upon compliance with the agreed requirements, an exact description for the calculation of the new price has been provided, as well. The customer must be immediately notified of the price revision and its reasons. If the price increase is more than 10 percent, the customer is entitled to withdraw from the contract without cancellation fees. (see section 7.1.a.).

#### **8.2 Service modifications after beginning of the travel**

- Changes for which the operator is responsible, the regulations as specified in section 5 (legal bases in case of impairments of performance) will apply.
- If it turns out after the departure that a significant proportion of the contractually agreed services will or cannot be provided, the operator must – without additional remuneration – make suitable alternative arrangements so that the journey can be continued. If it is impossible to make such arrangements or these are not accepted by the consumer for good reasons, the tour operator shall, where appropriate, provide the consumer, at no extra cost, with equivalent transport back to the place of departure, or to another return-point to which the consumer has agreed. Furthermore, in the case of non-performance or improper performance of the contract the tour operator is obliged, to assist the customer to the best of his abilities in the solution of problems.

#### **9. Provision of information to third parties**

Even in urgent cases, information regarding the names of the travellers and their whereabouts will not be provided to third parties unless the traveller has explicitly requested an information provision. The costs caused by the transmission of urgent messages are for the customer's account. Thus, the travellers are advised to notify their relatives the exact holiday address.

#### **10. General**

Sections 7.1. letter c, formerly letter b (cancellation), 7.1. letter d, formerly letter c (no-show) as well as 8.1. (price revision) listed under section B are non-binding association recommendations under 1 Kt 718/91-3 and as such are now registered under 25 Kt 793/96-3 in the Register of Cartels. This is translated from German. Only the german version is binding.