

# General Terms and Conditions for Tour Operators (Single Travellers and Travel Groups)

for hotels of AMBER HOTEL group (Status September 2023)

## 1 Scope of Applicability and Definitions

- 1.1 These terms and conditions govern all contracts which are concluded between the hotel and a tour operator related to hotel services for single travellers and/or travel groups (Hotel Accommodation Contract). These shall not apply for the booking of rooms or groups of rooms for events such as conferences, seminars, etc.
- 1.2 The term "Hotel Accommodation Contract" comprises and replaces the following terms: reservation contract, group room contract, accommodation, lodging, hotel and hotel room contract.
- 1.3 Hotel services are all services such as hotel room, meal arrangements and other offers agreed upon between the tour operator and the hotel and to be performed by the hotel. Charging of e-bike batteries is not allowed in the hotel rooms.
- 1.4 The customers of the tour operator for whom hotel services are booked are designated in the following as "single traveller" or "travel group" (jointly also referred to as "guests"). A travel group is comprised of at least 15 persons who are organized uniformly for one joint trip purpose and who as a rule arrive and leave on the same day.
- 1.5 The general terms and conditions of the tour operator shall apply only if these are previously expressly agreed.

## 2 Conclusion of Contract and Statute of Limitations

- 2.1 The contract comes into force upon the hotel's acceptance of the tour operator's offer. At its discretion, the hotel may confirm the reservation in written form.
- 2.2 Any claims against the hotel shall generally be time-barred one year after the commencement of the general statute of limitations period. This shall neither apply to damage claims nor to claims which are based on an intentional or grossly negligent breach of obligation by the hotel.

## 3 Rights and Obligations of the Tour Operator

- 3.1 The tour operator is obligated to notify the hotel of his number of reservations as early as possible or upon demand. The hotel is to be informed hereof, however, at the latest 30 days before the arrival date. At the same time, all necessary information is to be given to the hotel regarding the hotel services pursuant to No. 1.3 hereof.
- 3.2 The tour operator is obligated to pay the agreed prices or, if no prices are agreed, the listed prices or, respectively, the normal prices of the hotel for the hotel services according to No. 1.3 and the additional services it has received. This also applies to services ordered by the tour operator directly or via the hotel, which a third party provides and the hotel disburses.
- 3.3 The guests only have a claim to the hotel services pursuant to No. 1.3. The tour operator is obligated to inform his guests of this fact and to obligate them to provide reasonable security upon the request of the hotel, e.g. by deposit of credit card guarantees, for any use of services in addition hereto. This shall apply also to guests who have vouchers/coupons. Should no security be given by the guest in spite of respective request of the hotel and should the guest fail to pay, then the services made use of shall be paid for by the tour operator.
- 3.4 The tour operator must inform his guests regarding all circumstances and conditions relevant for the stay, in particular, regarding the regulation related to liability of the hotel pursuant to No. 8 hereof.
- 3.5 The tour operator shall name a contact person to the hotel, upon the hotel's request, who shall represent this travel group for all questions related to the care of the tour operator's travel group.

## 4 Rights and Obligations of the Hotel

- 4.1 The hotel is entitled to require a reasonable advance payment or a security, such as a credit card guarantee, from the tour operator upon conclusion of the contract. The amount of the advance payment and payment dates may be agreed in written form in the contract. The hotel shall confirm the receipt of an advance payment or a security.
- 4.2 In justified cases, e.g. default of payment by the tour operator or expansion of the scope of the contract, the hotel shall be entitled, also after conclusion of the contract up to the commencement of the stay, to demand an advance payment or a security within the meaning of No. 4.1 hereof or an increase of the advance payment or a security agreed upon in the contract up to the total agreed remuneration.
- 4.3 The hotel is not entitled to undertake unilateral changes to the agreed hotel services. Changes shall only be legally valid with the consent of the tour operator.
- 4.4 The tour operator acquires no claim to the provision of certain rooms insofar as not expressly agreed.
- 4.5 Reserved rooms shall be available to the tour operator as of 3:00 p.m. on the agreed arrival date. The tour operator does not have the right to earlier occupancy.
- 4.6 The rooms of the hotel shall be vacated on the agreed departure date by 12:00 p.m. at the latest. Thereafter, due to the delayed vacating of the room for use exceeding the contractual time, the hotel can charge 50% of the full accommodation rate (list price) for the additional use of the room until 6:00 p.m. (after 6:00 p.m.: 90%). No contractual claims of the tour operator shall be established hereby. The tour operator is at liberty to prove that the hotel has no or a much lower claim for charges for use of the room.

## 5 Prices, Payment, Set-Off

- 5.1 The agreed prices include all taxes and local taxes in effect at the time of the conclusion of contract, insofar as prices were not expressly agreed upon without value added tax. This does not include locally levied taxes, which are owed by the guest according to the particular municipal law, such as visitor's tax. If the statutory value added tax is changed or if local taxes concerning the rooms and services are newly introduced, changed or abolished after these have been contractually agreed upon, the prices will be adjusted.
- 5.2 The agreed prices are only valid in connection with further services, which are offered to the end customer bundled as a service package. They may not be offered to the end customer or third parties as unit prices for single overnight stays (non-packages) through distribution channels (in particular online). The tour operator is obligated to make all of its partners and agents compliant with this clause.
- 5.3 Hotel invoices not stating a due date are payable without deduction and due within ten days of receipt of the invoice. The hotel can demand immediate payment of due debt from the tour operator at any time. The statutory rules concerning the consequences of default of payment apply. The hotel reserves the right to prove greater damage.

- 5.4 The tour operator may only set-off or clear a claim of the hotel against a claim which is undisputed or decided with final, res judicata effect.
- 5.5 Agreements regarding any payment of a commission must be made either in the Hotel Accommodation Contract or in an agreement to be concluded simultaneously. In the case that more than one tour operator is responsible for the same reservation, the hotel shall only have to pay the commission once.
- 5.6 The following shall apply to all offers/contracts for which there is a time-lag of more than 4 months between the preparation of the offer and the provision of the service: The Hotel Operating Company shall be entitled, but not obliged, to adjust the respective calculation on which the booking was based at the time the offer was prepared – provided there is a period of at least 4 months between the booking and the provision of the service – in the event of significant changes in the procurement costs for required materials and/or operating costs, if it can be proved that there is an increase of more than 3% in these actual costs when you compare the figures at the time of the preparation of the offer and those during the provision of the service. The total price shall then increase in accordance with the weighting of the share in this item. If the customer does not agree to this increase, he/she shall have the right to terminate the contract, and this must be exercised in writing within a period of one week (time of receiving notice by the Hotel Operating Company) after receipt of the notification of the increase. The customer is also entitled to request such a review of the costs. Should it emerge after the review that there is a reduction in the costs, the cost price concerning the share in this item shall be reduced accordingly. If a review is to take place, the Hotel Operating Company shall carry it out at the latest one month before the agreed date of performance.

## 6 Withdrawal by Tour Operator (Cancellation, Annulment)/Failure to Use Hotel Services (No Show)

- 6.1 For Single Travellers:
  - 6.1.1 The tour operator can only withdraw from the contract concluded with the hotel if a right of withdrawal was explicitly agreed upon in the contract. Another statutory right of withdrawal exists or if the hotel gives its explicit consent to the withdrawal. The contractual agreement of a right of withdrawal as well as the consent to withdrawal from the contract shall be in written form.
  - 6.1.2 Insofar the hotel and the tour operator have agreed upon a date for a cost-free withdrawal from the contract, the tour operator may withdraw from the contract up to that date without incurring payment or damage compensation claims by the hotel. The tour operator's right of withdrawal shall expire, if he does not exercise his right of withdrawal vis-à-vis the hotel by the agreed date.
  - 6.1.3 If a contractual right of withdrawal was not agreed or has expired, a statutory right of withdrawal or cancellation is not given and the hotel does not give its consent to the cancellation of the contract the agreed hotel services shall be paid regardless of whether the customer avails himself of the contractual services. The hotel must credit the income from renting the rooms to other parties as well as for saved expenses. If the rooms are not rented otherwise, the hotel can demand the contractually agreed rate and assess a lump sum for the saved expenses of the hotel. In this case, the tour operator is obligated to pay at least 90% of the contractually agreed rate for lodging with or without breakfast as well as for all-inclusive arrangements with contracted services, 70% for half-board and 60% for full-board arrangements. The tour operator is entitled to prove that the above-mentioned claim has not accrued at all or has not amounted to the demanded sum.
- 6.2 For Travel Groups:
  - 6.2.1 Insofar a further right of withdrawal from the contract was not explicitly agreed upon in the contract or no other statutory right of withdrawal from the contract exists or the hotel does not give its explicit consent to the annulment of the contract, a withdrawal is only possible according to the following terms and conditions. The agreement of another right of withdrawal from the contract as well as the consent to an annulment of the contract shall be in written form.
  - 6.2.2 The tour operator is entitled to withdraw from the contract for travel groups concluded with the hotel according to No. 1.4:
    - up to 90 days before arrival, 100% of the agreed total volume,
    - up to 60 days before arrival, 50% of the agreed total volume,
    - up to 30 days before arrival, 25% of the agreed total volume.
  - 6.2.3 The right of withdrawal can only be exercised once. In order to calculate the deadline the day of arrival is not counted.
  - 6.2.4 The tour operator's right of withdrawal expires if he does not exercise it up to the agreed date.
  - 6.2.5 If a right of withdrawal was not agreed, has already expired or if the withdrawal occurs at a later date or in a scope which is greater than permitted according to the contract, if no other right of withdrawal or annulment exists or if the hotel does not give its consent to the annulment of the contract, the hotel remains entitled to the contractually agreed rate, even if the rooms are not used. The hotel must credit the income from renting the rooms to other parties as well as saved expenses. If the rooms are not rented otherwise, the hotel can demand the contractually agreed rate and assess a lump sum for the saved expenses of the hotel. In this case, the tour operator is obligated to pay at least 90% of the contractually agreed rate for lodging with or without breakfast as well as packages with contracted services, 70% for room and half-board, and 60% for room and full-board arrangements. The tour operator is entitled to prove that the above-mentioned claim has not accrued at all or has not amounted to the demanded sum.

## 7 Withdrawal by Hotel

- 7.1 For Single Travellers:
  - 7.1.1 Insofar as it was agreed that the tour operator can withdraw from the contract, in whole or in part, at no cost within a certain period of time, the hotel is entitled for its part to withdraw from the contract to the same extent during this period of time if inquiries from third parties regarding the contractually reserved rooms exist and the tour operator, upon inquiry thereof by the hotel with a reasonable deadline set, does not waive his right of withdrawal.
  - 7.1.2 If an agreed advance payment or an advance payment or a security demanded pursuant to No. 4.1 and/or No. 4.2 is not made even after a reasonable grace period set by the hotel has expired, then the hotel is likewise entitled to withdraw from the contract.
  - 7.1.3 Moreover, the hotel is entitled to effect extraordinary withdrawal from the contract for a materially justifiable cause, in particular if
    - force majeure or other circumstances beyond the hotel's control render the fulfillment of the contract impossible;

- rooms or spaces are reserved with culpably misleading or false information or concealment regarding essential facts the identity or solvency of the customer or the purpose of his stay can constitute essential facts; the hotel has justified cause to believe that use of the hotel's services might jeopardize the smooth operation of the hotel, its security or public reputation, without being attributable to the hotel's sphere of control or organization;
  - the purpose or the cause of the stay is illegal.
- 7.1.4 The justified withdrawal by the hotel constitutes no claims for damages for the tour operator.
- 7.2 For Travel Groups:
- 7.2.1 Insofar as it was agreed in the contract that the tour operator can withdraw from the contract at no cost, in whole or in part, within a certain period of time, the hotel is entitled for its part to withdraw from the contract to the same extent during this period of time if inquiries from third parties regarding the contractually reserved rooms exist and the tour operator, upon inquiry thereof by the hotel with the setting of a reasonable deadline, does not waive his right of withdrawal.
- 7.2.2 Within the deadline named in No. 6.2.2, the hotel is also entitled to partially withdraw from the contract at no cost to the same extent as the tour operator, if also in this case the tour operator waives his right of withdrawal.
- 7.2.3 If an agreed advance payment or an advance payment or a security demanded pursuant to No. 4.1 and/or No. 4.2 is not made even after a reasonable grace period set by the hotel has expired, then the hotel is likewise entitled to withdraw from the contract.
- 7.2.4 Should the contractual obligation to provide information concerning the number of reservations pursuant to No. 3.1, sentence 2 not be met or not be met in a timely manner, then the hotel is likewise entitled to withdraw from the contract. Furthermore, the hotel shall be entitled to a right of withdrawal in the case that the number of guests reserved as a travel group is reduced to less than 15 (loss of group status pursuant to No. 1.4).
- 7.2.5 Moreover, the hotel is entitled to effect extraordinary withdrawal from the contract for a materially justifiable cause, in particular if
- force majeure or other circumstances beyond the hotel's control render the fulfilment of the contract impossible;
  - rooms or spaces are reserved with culpably misleading or false information or concealment regarding material facts; the identity of the tour operator or the guest can constitute an essential fact as well as its solvency or the purpose of the stay;
  - the hotel has justified cause to believe that use of the hotel's services might jeopardize the smooth operation of the hotel, its security or public reputation, without being attributable to the hotel's sphere of control or organization;
  - the purpose or the cause of the stay is illegal.
- 7.2.6 The justified withdrawal by the hotel constitutes no claim for damages for the tour operator.

## 8 LIABILITY OF THE HOTEL

- 8.1 The hotel is liable for harm inflicted on life, limb and physical health. Further it is liable for other damage caused with full intent or gross negligence or due to intentional or grossly negligent violation of obligations typical for the contract. A breach of obligation of the hotel is deemed to be the equivalent to a breach of a statutory representative or vicarious agent. All other claims for damages are excluded, if not determined differently in this No. 8. Should disruptions or defects in the performance of the hotel occur, the hotel shall act to remedy such upon knowledge thereof or upon objection by the tour operator made without undue delay. The tour operator or the guest shall be obliged to undertake actions reasonable for him to eliminate the disruption and to keep any possible damage to a minimum.
- 8.2 The hotel is liable to the guest for property brought into the hotel in accordance with the statutory provisions. It recommends the use of the hotel or room safe. If the guest wishes to bring with him money, securities, stocks, bonds or valuables with a value of more than 800 EUR or other things with a value of more than 3500 EUR, a separate safekeeping agreement is necessary.
- 8.3 Insofar as a parking space is provided to the tour operator in the hotel garage or a hotel parking lot, this does not constitute a safekeeping agreement, even if a fee is exchanged. The hotel only assumes liability for loss of or damage to motor vehicles parked or manoeuvred on the hotel's property and the contents thereof only pursuant to the preceding No. 8.1, sentences 1 to 4.
- 8.4 Wake-up calls are carried out by the hotel with greatest possible diligence. Messages, mail, and merchandise deliveries for guests shall be handled with care. The hotel will deliver, hold, and for a fee, forward such items (on request). The hotel only assumes liability according to the preceding No. 8.1, sentences 1 to 4.

## 9 FINAL PROVISIONS

- 9.1 Amendments and supplements to the contract, the acceptance of offers or these general terms and conditions should be made in written form. Unilateral amendments or supplements by the tour operator are invalid.
- 9.2 For commercial transactions the place of performance and payment as well as, in the event of litigation, including disputes for checks and bills of exchange, the exclusive court of jurisdiction is at the location of the hotel. Insofar as a contracting party fulfills the requirements of section 38, para. 2 of the German Code of Civil Procedure (ZPO) and does not have a place of general jurisdiction within the country, the courts at the location of the hotel shall have jurisdiction.
- 9.3 The contract is governed by and shall be construed in accordance with German Law. The application of the UN Convention on the International Sale of Goods and the Conflict Law are precluded.
- 9.4 Should individual provisions of these general terms and conditions be or become invalid or void, the validity of the remaining provisions shall remain unaffected thereby. The statutory provisions shall also be applicable.