

## **General Terms and Conditions THE FLAG Service München GmbH**

### **1. Scope of Applicability**

- a) These Terms and Conditions govern contracts for the rental use of rooms for lodging purposes, as well as all other goods and services rendered by the hotel for the customer.
- b) The prior written consent of the hotel is required if rooms provided are to be sublet or rented out or used other than for lodging purposes, whereby § 540 par. 1 sentence 2 German Civil Code (BGB) is waived insofar as the customer is not a consumer.
- c) The customer's general terms and conditions shall apply only if this is previously expressly agreed in writing.

### **2. Conclusion of Contract, Contracting Parties; Statute of Limitations**

- a) The contract shall come into force upon the hotel's acceptance of the customer's application. At its discretion, the hotel may confirm the room reservation in writing.
- b) The contracting parties are the hotel and the customer. If a third party made the reservation on behalf of the customer, that party shall be liable to the hotel as joint and several debtor together with the customer for all obligations arising from the contract which is concluded.
- c) Any claims against the hotel shall generally be time-barred one year after the commencement of the general statute of limitations period. Damage claims shall be time-barred after five years, regardless of knowledge. The reduction of the statute of limitation periods shall not apply to claims which are based on an intentional or grossly negligent breach of obligation by the hotel.

### **3. Services, Prices, Payment, Set-Off**

- a) The hotel is obligated to keep the rooms reserved by the customer available and to render the agreed services.
- b) The customer is obligated to pay in advance the applicable or agreed hotel prices for rooms provided and for other services used. This shall also apply to the hotel's services and outlays to third parties initiated by the customer.
- c) The agreed prices include applicable value added tax as required by law. If the value added tax is changed by the day on which a service is rendered, the agreed prices will be adjusted; the hotel has the right to demand additional payment for any increased value added tax. If the period between the conclusion and fulfilment of the contract exceeds four months and the price generally charged by the hotel for such services increases, then the contractually agreed price may be increased reasonably, however not more than 5 %.
- d) The prices can also be changed, if the customer later requests a change in the number of rooms booked, the hotel services required or the length of stay, and the hotel agrees thereto.
- e) Hotel invoices not showing a due date are due and payable without any deduction immediately after receipt of the invoice. The hotel shall be entitled at any time to demand immediate payment of due debt from the customer. In case of default of payment, the hotel shall be entitled to demand the respectively applicable statutory default interest in the amount of currently 8%, or, in the case of legal transactions with a consumer, in the amount of 5% above the base interest rate. The hotel reserves the right to prove greater damage.
- f) The hotel is entitled to require a reasonable advance payment or security deposit upon conclusion of the contract. The amount of the advance payment and the payment dates may be agreed in writing in the contract.
- g) The customer may set off, withhold or reduce a claim by the hotel or exercise a right of retention only on the basis of an indisputable or legally binding claim.

#### **4. Withdrawal of the Customer (Cancellation, Annulment), Failure to Use Hotel Services (No Show)**

- a) Cancellation by the customer of the contract concluded with the hotel requires the hotel's written consent. If this is not given, the price agreed in the contract must be paid even if the customer does not make use of the contractual services. This does not apply in the case of breach of obligation of the hotel to take into account the rights, objects of legal protection and interests of the customer, if holding to the contract is no longer reasonable or another statutory or contractual cancellation right exists.
- b) If the hotel and customer agreed in writing upon a date for a cost-free cancellation of the contract, the customer may cancel the contract up to that date without incurring payment or damage compensation claims by the hotel. The customer's right of cancellation shall expire if he does not exercise his cancellation right in writing to the hotel by the agreed date, insofar as no cancellation case pursuant to clause 4. a) sentence 3 exists.
- c) If rooms are not used by the customer, the hotel must apply credit for the income from renting the rooms to other parties and also for saved expenses.
- d) The hotel is free to demand the contractually agreed compensation and to deduct a lump sum for saved expenses. In this case, the customer is obligated to pay at least 90% of the contractually agreed rate for lodging with or without breakfast.
- e) If not agreed otherwise, cancellations at no charge are possible until 14 days before arrival.
- f) The customer is at liberty to show that the claim mentioned above does not exist at all, or not in the amount demanded.

#### **5. Withdrawal of the Hotel**

- a) Insofar a right of cost-free cancellation for the customer within a certain period was agreed in writing, the hotel is entitled for its part to cancel the contract during that period if there are inquiries from other customers regarding the contractually reserved rooms and the customer does not waive his right of withdrawal upon inquiry of the hotel.
- b) If an agreed advance payment or demanded pursuant to clause 3. e) and/or f) is not made even after a reasonable period set by the hotel, the hotel is likewise entitled to cancel the contract.
- c) Moreover, the hotel is entitled to effect extraordinary withdrawal of the contract for a materially justifiable cause, e.g. if
  - force majeure or other circumstances for which the hotel is not responsible make it impossible to fulfill the contract,
  - rooms are reserved with misleading or false information regarding essential facts, such as the identity of the customer or the purpose of the stay at the hotel,
  - the hotel has justified cause to believe that the use of the hotel's services might jeopardize the smooth business operation of the hotel, its security or public reputation, without this being attributable to the management or organization of the hotel,
  - there is a breach of clause 1. b)
- d) The hotel has to inform the customer of the exercise of the right of withdrawal without delay.
- e) The customer can derive no right to compensation from justified cancellation by the hotel.

#### **6. Room Availability, Handover and Return**

- a) The customer does not acquire the right to be provided specific rooms.
- b) Reserved rooms are available to the customer starting at 2:00 p.m. on the agreed arrival date. The customer does not have the right to earlier availability.
- c) Rooms must be vacated and made available to the hotel no later than 11 a.m. on the agreed departure date. After that time, due to the delayed vacating of the room for use exceeding the contractual time,

the hotel may charge 50% of the full accommodation rate (list price) for the additional use of the room until 6:00 p.m., and 100% after 6:00 p.m. Customers can derive no contractual claims from these surcharges. The customer is at liberty to prove that there was no claim for compensation or that it was significantly lower.

## **7. Liability of the Hotel**

- a) The hotel is liable for the performance of its obligations arising from the contract with the due care of a prudent business man. Claims of the customer for damages are excluded except for those which result from injury to life, body, or health, if the hotel is responsible for the breach of the obligation, or other damage that is caused from an intentional or grossly negligent breach of obligation on the part of the hotel. A breach of obligation of the hotel is deemed to be equivalent to a breach of a legal representative or vicarious agent. Should disruptions or defects in the services of the hotel occur, the hotel shall act to remedy these upon knowledge thereof or upon objection by the customer made without undue delay. The customer shall be obliged to undertake actions reasonable for him to eliminate the disruption and to keep any possible damage at a minimum.
- b) The hotel is liable to the customer for property brought in to the hotel in accordance with the statutory provisions, i.e., up to one hundred times the room rate, not to exceed €3,500.00, and up to €800.00 for cash, securities, and valuables. Any liability claims expire unless the customer immediately reports to the hotel after gaining knowledge of the loss, destruction or damage (§ 703 of the German Civil Code (BGB)).
- c) If a parking space has been provided to the customer in the hotel garage, this does not constitute a safekeeping agreement, even if a fee is charged. The hotel is not liable for the loss or damage of motor vehicles or bicycles parked or manoeuvred on the hotel's property, nor for their contents, except in cases of willful intent or gross negligence. Clause 7 a) sentences 2 to 4 above shall apply respectively.
- d) Messages, mail and delivered packages for guests are handled with care. The hotel will deliver, store, and – upon request – forward such items for a fee. Clause 7 a) sentences 2 to 4 above shall apply respectively. A custody agreement is not provided through this.
- e) The hotel is not liable for belongings of the customer which were left behind. They will be sent to the customer only upon request and for a fee. The hotel is obliged to store these left items for 3 months.

## **8. Final Provisions**

- a) Amendments and supplements to the contract, the acceptance of applications, or these General Terms and Conditions must be in writing. Unilateral amendments or supplements by the customer are not valid.
- b) Place of performance and payment is the location of the hotel.
- c) The exclusive place of jurisdiction for commercial transactions – including disputes for cheques and bills of exchange – is the location of the hotel. Insofar as a contracting party fulfills the requirements of § 38 par. 2 of the German Code of Civil Procedure (ZPO) and does not have a general place of jurisdiction in Germany, the courts at the location of the hotel shall have jurisdiction.
- d) 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 of the conflict of laws are precluded.
- e) Should any provision 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.