

## **General Travel Conditions (ARB 1992)**

These General Travel Conditions conform to the amendment to the Consumer Protection Act BGBl. 247/93 and to the Warranty Law Amendment Act, BGBl. I No. 48/2001

There is common debate in the Consumer Advisory Board of the Federal Minister for Health, Sport and Consumer Protection in accordance with § 73 Abs. 1 GewO 1994 and § 8 of the Regulation by the Federal Minister for Economic Affairs in the 1994 version for exercising regulations concerning the travel agency industry (henceforth § 6, according to BGBl. II No. 401/98).

The travel agency is permitted to perform as agent (Section A) and/or organiser (Section B). The agent accepts the responsibility to endeavour to obtain entitlement to the performance of services by others (organisers, transport companies, hoteliers etc). The organiser is the company that either offers a number of tourist services at an inclusive price (package travel/tour operation) or promises to perform individual tourist services on his/her own account and to this end generally has his/her own brochures, offer documents and so forth available.

A company which presents itself as a tour operator, may also be active as an agent, where outside services are being arranged (e. g. optional excursions at the holiday location), in as far as it makes reference to this agency function.

The following conditions present the contractual text generally used by travel companies as agents (Section A) or as organiser (Section B) to make contracts with their customers/travellers (comment: in the context of the KSchG).

The particular conditions

- the providing travel organiser,
- the providing transport company (e.g. rail, bus, aircraft or ship) and
- the other service providers have precedence.

### **A. TRAVEL AGENCY AS AGENT**

The following conditions are the basis of the contract (business arrangement contract), which customers conclude with the agent.

#### **1. Reservation/conclusion of a contract**

The reservation may be in writing or verbally by telephone or verbally in person. Telephone

reservations should be confirmed in writing by the travel agency immediately.

Travel agencies should use reservation slips which show all important details of the reservation by the customer under reference to the travel offer on which it is based (catalogue, brochure etc.). The agent should make reference to his/her own service and that of the organiser according to § 6 of the Performance Regulations for the Travel Agency Industry in the GENERAL TRAVEL CONDITIONS, and make the customer aware of any deviations from or exceptions to these travel conditions and in such a case to hand them out verifiably prior to concluding the contract.

Where services of foreign companies (service providers, travel organisers) have been arranged, foreign law may also be applicable. Any person making a reservation for themselves or for a third person is considered to be the contracting party and assumes in the absence of any other explanation the duties in the contract in relation to the travel agency (payments, cancellations, withdrawal from contract etc.). The travel agent is entitled at the time of the reservation being made to require an administrative charge and a (minimum) deposit. The balance and reimbursement of cash expenditure (telephone costs, telex costs etc.) are due at the handover of the travel documents (this does not include personal documents) of the respective organiser or service provider. Travel companies, who accept reservations are duty bound to provide the traveller with a confirmation of the travel contract (travel confirmation) at the time the contract is made or without delay following conclusion of the contract.

## ***2. Information and other miscellaneous services***

### **2.1. Information concerning passports, visas, foreign exchange, customs and health regulations.**

It is taken as a known requirement that a valid passport is generally required for journeys abroad. The travel agency is required to inform the customer about other relevant foreign passport, visa and health regulation entry requirements to foreign countries as well as to answer questions concerning foreign exchange and customs regulations, in as far as this information can be found out in Austria. Incidentally the customer is responsible for complying with these regulations. If possible the travel agency will obtain against payment at the most a necessary visa. If requested to do so the travel agency will, as far as possible, give information concerning special regulations for foreigners, stateless persons or persons with dual nationality.

### **2.2. Information about the tour management**

The travel agency is duty bound to describe the service provided by the travel organiser or service provider under consideration of the particularities of each contract arranged and the

conditions in each respective country or target location according to their best knowledge and ability.

### **3. Legal status and liability**

The liability of the travel agency covers:

- careful selection of each organiser or service provider as well as careful evaluation of experience gained;
- proper provision of services including informing the customer accordingly and supply of the travel documents;
- verifiable handing on of notices, declarations of intent and payments between customers and companies engaged and the reverse (as for example change in the agreed service and agreed prices, cancellations, claims).

The travel agency is not liable for the performance of the services which her/she has secured or procured. The travel company when confirming the travel to the customer under the company name (product name), show the address of the travel organiser and if necessary of an insurer in as far as this is not to be found in the brochure, catalogue or other detailed advertising material. Should he/she not do this then he/she is liable to the customer as organiser or service provider.

### **4. Impairments of performance**

If the travel agency breaches the duties resulting from the contractual relationship, then he/she is duty bound to compensate the customer for damages incurred, if it is not proved that he/she is guilty of neither intent nor gross negligence.

In the case of breaches of contract for reasons of minor breach, the travel agency is duty bound to reimburse the customer with the sum of the damages which have arisen to an amount equivalent to the amount of commission on the procured business.

## **B. THE TRAVEL AGENCY AS ORGANISER**

The following conditions are the basis of the contract - hereinafter called the travel contract - which the person reserving concludes with the organiser either directly or through the office of an agent. In the case of a direct contract the organiser is responsible for the agent duties in the same way. The organiser recognises the GENERAL TRAVEL CONDITIONS as the basis, variances are made clear in all the organisers detailed advertising material in accordance with § 6 of the regulations.

### **1. Reservation/ conclusion of contract**

The travel contract between the person reserving and the organiser comes into force when there is agreement concerning the important components (price, performance and time). This results in the customer having rights and duties.

### **2. Change in the person participating in the travel**

A change in the person undertaking the travel is possible if the substitute person fulfils all the requirements of participation and it can transpire in one of two ways.

#### **2.1. Separation of entitlement to travel performance**

The duties of the person reserving in the contract remain in force, if he/she transfers all or individual entitlements in the contract to a third party. In this case the person making the reservation bears any extra costs resulting from this.

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

If the customer is prevented from commencing the travel event then he/she is entitled to transfer the contractual relationship to another person. The transfer should be communicated directly to the organiser within an appropriate period of time prior to the time of departure. The person transferring and the recipient are liable for any monies still outstanding as well as any additional costs arising in undivided amount.

### **3. Contract content, information and other miscellaneous services**

where the agent has duties to provide relevant information (namely information concerning passports, visas, foreign exchange, customs and health regulations for entry) and the organiser has further to inform in adequate manner about the services which are offered. The descriptions of services in the catalogue or brochure valid at the time of booking as well as further information contained therein are part of the travel contract, other than where other arrangements were agreed at the time of the reservation being made. It is however recommended that such arrangements be properly recorded in writing at the time for all eventualities.

### **4. Travelling with particular risks**

Where travel involves particular risk (for example in the nature of an expedition) the organiser is not responsible for the outcome which might happen in the course of the risks being incurred, if these transpire outside his field of duty. The duty of the travel organiser to plan and prepare the travel and select the persons assigned with providing the individual services carefully, remains unaffected.

## **5. Legal basis for impairments to service performance**

### **5.1. Guarantee**

The customer has a guarantee claim if the service performed has not been performed or has been inadequately performed. The customer agrees that the organiser in place of his claim for conversion or price reduction may within an appropriate period of time seek to provide a flawless service or improve on an inadequate service performance. Redress may be in the form that the shortcoming can be remedied or an equal or higher value performance which also has the express agreement of the customer can be provided.

### **5.2. Damages**

If the organiser or its aids and abettors breach its duties under the contract, then it is responsible to compensate the customer for the costs resulting. In as far as the travel organiser is responsible for persons other than its employees then it is responsible - excepting if it is a matter of personal injury - only, if it does not prove that this concerned neither intent nor gross negligence. Other than in cases of intent or gross negligence the travel organiser is not liable for objects which would not normally be taken along, other than he has taken these into safekeeping in knowledge of the circumstances. Customers are therefore recommended not to take objects of value with them.

### **5.3. Reporting shortcomings**

The customer is required to report any shortcoming that is found in fulfilling the contract during the event immediately to a representative of the organiser. This requires that such has been made known to him and that this is achievable there and then without notable effort. Not making this report does not affect anything at all regarding the customer's claim on guarantee described under 5.1. It can however be considered as contributory negligence and therefore possibly reduce any claim for damages. The travel organiser must however have advised the customer in writing either directly or through an agent of the duty to inform. At the same time the customer must also be informed that not reporting does not affect his claim for damages, but that it may be considered to be of the nature of contributory negligence. If it should arise it is to be recommended in the case of a shortcoming to inform a local representative either of the relevant service provider (for example, hotel or airline) or the organiser direct and to request a remedy.

### **5.4. Special liability related laws**

The organiser is liable in the case of flights according to the Warsaw Convention and supplementary agreement. In the case of rail and bus journeys liability is according to the Railway and Road Vehicle Third Party Liability Act.

## **6. Enforcing possible claims**

To make it easier to enforce claims, the customer is recommended to insist on receiving written confirmation of non or inadequate performance of a service and as far as possible, and secure receipts, proof and witnesses with their details. Guarantee claims can be enforced by consumers within a period of two years. The statute of limitations comes into effect after a period of three years. It is recommended in the interest of the participant to make claims without delay upon return from the event directly to the organiser or via the travel agency which made the arrangements with the organiser, as there can be increased delays with difficulties of proving matters.

## **7. Withdrawing from the contract**

### **7.1. Withdrawal by the customer prior to departing**

#### **a) Withdrawal without cancellation fee**

Irrespective of the legally available cancellation rights of the customer without the organiser having redress before the performance commences there are cases where the customer can withdraw: If important components of the contract, including the price are substantially changed.

In any case the frustration of the intended reason and/or character of the travel event, as well as the increase in the agreed price by more than 10 percent in accordance with Section 8.1 constitute such changes in the contract. The organiser is duty bound to either directly or the travel agency to make arrangements to explain the changes to the contract without delay and also to inform him/her that he/she has two choices, either to accept the change to the contract or to withdraw from the contract, the customer must exercise his right to choose without delay.

In as far as the organiser is at fault at the beginning of the event from which the customer is entitled to withdraw, the organiser is duty bound to compensate the customer.

#### **b) Right to indemnification**

If the customer does not invoke the possibility to withdraw according to 7.1.a above and if the tour operator cancels without any blame on the part of the customer, the customer can demand that instead of rescission of the contract he/she will participate in another tour event of equivalent value, in as far as the organiser is in a position to provide such a service. Besides the right to an option the customer also has the right to compensation for non-performance of the contract, in as far as the cases in 7.2 transpire.

**c) Withdrawal with cancellation charge**

The cancellation charge is in a percentage relationship to the tour price and as far as amount is concerned, according to the point in time that the notice of withdrawal is made and the nature of the travel. The tour price or package price is understood to be the contractual performance. The customer is entitled to withdraw from the contract against payment of a cancellation charge in all cases not covered under 7.1.a. Where it is considered that the amount of the cancellation charge is too high this may be brought before a court to consider reducing it. Depending on the nature of travel the following are the cancellation charges per person:

1. Charter flights, Group IT (Group package tour with scheduled flights), Coach tours (lasting several days)

- up to 30th day before commencing trip..... 10%
- from 29th to 20th before commencing trip..... 25%
- from 19th to 10th day prior to commencing trip..... 50%
- from 9th to 4th day prior to commencing trip..... 65%
- from 3rd day (72 hours) before commencing trip..... 85%

of the travel price

2. Single IT (individual package tour with scheduled flights), Rail travel (excluding chartered, excursion or special trains)

- up to 30th day prior to commencing the tour..... 10%
- from 29th to 20th day prior to commencing the tour..... 15%
- from 19th to 10th day prior to commencing the tour..... 20%
- from 9th to 4th day prior to commencing the tour..... 30%
- from 3rd day (72 hours) prior to commencing the tour..... 45%

of the tour price. Special conditions apply to hotel accommodation, ship tours, bus day excursions, chartered, excursion and special trains and scheduled flights. These are to be shown in the detailed programme.

**Notice of withdrawal**

When withdrawing from the contract special attention should be paid to:

The customer (party ordering) may inform the travel agent, where the tour was booked, at any time that he/she is withdrawing from the contract. When cancelling it is recommended to do this by registered letter or personally with a written explanation at the same time.

**d) No-show**

No-show exists, if a customer do not appear for the departure, because he/she lacks the desire to travel or if he/she misses the departure because of negligence which has occurred or because of a mishap that has befallen him/her. It is further clear that the customer is not going to, or cannot, make use of the remaining tour service then he/she has to pay, in the case of natures of travel as described in c.1 (charter flights and so forth) 85 percent, in cases as described in c.2 (individual IT, and so forth) 45 percent of the tour price. In case of this being inappropriate it may be brought before a court to decide if it should be reduced.

**7.2. Withdrawal of the organiser prior to commencing the tour.**

a) The organiser is released from fulfilling the contract if a certain minimum number of participants stated in the offer from the outset is not reached and the customer is notified of the cancellation in writing according to the time limits in the description of the tour event or the following time limits

- up to the 20th day prior to commencing tours which exceed 6 days
- up to 7th day prior to commencing tours of from 2 to 6 days
- up to 48 hours prior to departure for day excursions

Should the organiser be met by debts exceeding those incurred by a slight negligence in not reaching the minimum number of participants, the customer may demand compensation; this is a lump sum related to the amount of the cancellation charge. The enforceability of damages exceeding this amount is not excluded.

b) Cancellation is due to force majeure, i.e. as a result of unusual and unpredictable events, over which the person claiming force majeure has no influence and the results of which despite application of due care, were unable to be avoided. This does not however include overbooking, but does include national decrees and regulations, strikes, war or warlike situations, epidemics, natural catastrophes and so forth.

c) In cases a) and b) the customer receives back the amount paid in. The option according to 7.1.b, 1st paragraph is available.

**7.3. Withdrawal of the organiser after the tour has commenced**

The organiser is released from performing the contract if the customer within a group tour, despite being warned, continually or repeatedly disturbs the carrying out of the tour by gross improper behaviour. In this case in as far as blame on the part of the customer is the case, the customer is duty bound to compensate the organiser for damages.



## **8. Changes to the contract**

### **8.1. Price changes**

The organiser reserves the right, to increase the tour price confirmed when the reservation was made for reasons which are not dependent on the organiser's wishes, in as far as the departure date is more than two months after conclusion of the contract. Such reasons are exclusively change of transport costs ?such as fuel costs ? dues for certain services, such as landing charges, embarkation or disembarkation dues in ports and corresponding dues at airports or the exchange rates used for the tour event. Should a reduction in price be forthcoming for any of these reasons then it is to be passed on to the customer.

Within the two month time limit price increases may only be permissible if the reasons for them were individually negotiated when the reservation was being made and noted on the reservation form. From the 20th day prior to departure price changes are not permitted. A price change is only then permissible if when presenting the agreed preconditions there is also an exact presentation of how the new price is calculated. The price changes and the reasons for them are to be explained too the customer without delay. If the tour price is altered by more than 10 percent it is in any case possible for the customer to withdraw from the contract without a cancellation charge (see Section 7.1.a.).

### **8.2. Changes in services after the tour has commenced**

Among the changes which the organiser can justify are those regulations as described in Section 5 (legal basis for impairment to service performance).

Should it be that after departure a substantial part of the contractually agreed services is not performed or cannot be performed then the organiser without additional consideration is required to take appropriate measures in order for the tour to be carried out. Should such measures not taken or should they not be accepted by the customer for good reason then the organiser is required to provide if necessary an alternative possibility without additional consideration, with which the customer can be conveyed to the point of departure or to another location agreed with the customer. The organiser is duty bound where the contract is not performed or inadequately performed to use best efforts to help the customer overcome difficulties.

## **9. Right of disclosure to third parties**

Information concerning the names of the tour participants and the whereabouts of tourists are not to be given to third parties even in urgent cases, unless the tourist has specifically requested that this be done. Costs arising from communicating urgent messages are at the customer's expense. It is therefore recommended that the tour participant gives the exact holiday address to their next of kin.

## **10. General**

The Sections appearing under B, 7.1.c, previously b (Withdrawal), 7.1.d, previously c (No-show) as well as 8.1 (price changes) are all non-binding Association recommendations under 1 Kt 718/91-3 and are henceforth registered as such under 25 Kt 793/96-3 in the Register of Cartels.