

GENERAL TERMS AND CONDITIONS FOR HOTEL ACCOMMODATION CONTRACTS (VERSION: JULY 2008) > HOTEL BIRKE, KIEL:

I. SCOPE OF APPLICABILITY

1. These Terms and Conditions govern contracts for the rental use of hotel rooms for lodging purposes, as well as all other goods and services rendered by the hotel for the customer in this connection (Hotel Accommodation Contract). The term "Hotel Accommodation Contract" comprises and replaces the following terms: lodging, rooms, hotel, hotel room contract.
2. The prior written consent of the hotel is required if rooms provided are to be sublet or rented to other parties or used other than for lodging purposes, whereby section 540, para. 1, sentence 2 German Civil Code is waived insofar as the customer is not a consumer.
3. The customer's general terms and conditions shall apply only if these are previously expressly agreed in writing.

II. CONCLUSION OF CONTRACT, PARTIES, STATUTE OF LIMITATIONS

1. 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 text form.
2. The parties to the contract are the hotel and the customer. If a third party placed the order on behalf of the customer, then that party shall be liable vis-à-vis the hotel for all obligations arising from the hotel accommodation contract as joint and several debtor together with the customer, insofar as the hotel has a corresponding statement by the third party.
3. 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, independent of knowledge. The reduction of the statute of limitation periods shall not apply for claims which are based on an intentional or grossly negligent breach of obligation by the hotel.

III. SERVICES, PRICES, PAYMENT, SET-OFF

1. The hotel is obligated to keep the rooms reserved by the customer available and to render the agreed services.
2. The customer is obligated to pay the agreed or applicable hotel prices for rooms provided and for other services used. This shall also apply to the hotel's services and outlays to third parties caused by the customer. The agreed prices shall include the respective statutory Value Added Tax.
3. The hotel can make its agreement to the customer's later request for a reduction of the number of reserved rooms, services of the hotel or the customer's length of stay dependent upon the increase of the price for the rooms and/or for the other services.
4. Hotel invoices not showing a due date are payable and due in full within ten days of receipt of the invoice without deduction. The hotel shall be entitled at any time to make accumulating accounts receivable payable and due and to demand payment without undue delay. With default of payment, the hotel shall be entitled to demand the respectively applicable statutory default interest in the amount of currently 8 % or, with legal transactions with a consumer, in the amount of 5 % above the base interest rate. The hotel reserves the right to prove greater damage.
5. The hotel is entitled to require a reasonable advance payment or security deposit from the customer upon conclusion of the contract in the form of a credit card guarantee, an advance payment, etc. The amount of the advance payment and payment dates may be agreed in writing in the contract. With advance payments or security deposits for package tours, the statutory provisions shall remain unaffected.
6. In justified cases, e.g. the customer's default in payment, the hotel shall be entitled, also after the conclusion of the contract up to the commencement of the stay, to demand an advance payment or security deposit within the meaning of the above-mentioned No. 5 or an increase of the advance payment or security deposit agreed in the contract up to the total agreed remuneration.
7. Furthermore, the hotel shall be entitled, at the commencement and during the customer's stay, to demand a reasonable advance payment or security deposit within the meaning of the above-mentioned No. 5 for existing and future accounts receivable from the contract, insofar as such has not already been paid pursuant to the above-mentioned No. 5 and/or No. 6.
8. The customer may only set-off or reduce a claim by the hotel with a claim which is undisputed or decided with final, res judicata effect.

IV. REPUDIATION BY CUSTOMER (CANCELLATION, ANNULMENT) / FAILURE TO USE HOTEL SERVICES (NO SHOW)

1. Cancellation by the customer of the contract concluded with the hotel requires the hotel's written consent. If such is not given, then the price agreed in the contract must be paid even if the customer does not avail himself of the contractual services. This shall not apply with the 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.
2. To the extent 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 vis-à-vis the hotel by the agreed date, insofar as no cancellation case pursuant to Item clause IV, No. 1, sentence 3 *supra* exists.
3. If rooms are not used by the customer, the hotel must credit the income from renting the rooms to other parties and also for saved expenses. If the rooms are not otherwise rented, the hotel can demand the contractually agreed rate and assess a flat rate for the saved expenses of the hotel. In this case, the customer is obligated to pay at least 90 % of the contractually agreed rate for lodging with or without breakfast, 70 % for room and half-board, and 60 % for room and full-board arrangements. The customer is at liberty to show that the above-mentioned claim was not created or not created in the amount demanded.

V. CANCELLATION BY HOTEL

1. Insofar as it was agreed in writing that the customer can cancel the contract at no cost within a certain time period, the hotel is entitled for its part to cancel the contract during this time period if inquiries from other customers regarding the contractually reserved rooms exist and the customer, upon inquiry thereof by the hotel, does not waive his right of cancellation.
2. If an agreed advance payment or an advance payment or security deposit demanded pursuant to Item clause III, No. 5 and/or No. 6 *supra* is not made even after a reasonable grace period set by the hotel has expired, then the hotel is likewise entitled to cancel the contract.
3. Moreover, the hotel is entitled to effect extraordinary cancellation 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 fulfil the contract;
 - rooms are reserved with misleading or false information regarding material facts, such as the identity of the customer or the purpose of his 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;
 - there is a breach of the above-mentioned Item clause I., No. 2 *supra*.
4. The customer can derive no damage compensation rights from justified cancellation by the hotel.

VI. ROOM AVAILABILITY, DELIVERY AND RETURN

1. The customer does not acquire the right to be provided specific rooms.
2. Reserved rooms are available to the customer starting at 3:00 p.m. on the agreed arrival date. The customer does not have the right to earlier availability.
3. Rooms must be vacated and made available to the hotel no later than 12:00 noon on the agreed departure date. After that time, on the grounds of 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. (after 6:00 p.m.: 100 percent). Contractual claims of the customer shall not be established hereby. The customer is at liberty to prove that the hotel incurred no or much lesser claim to use damages.

VII. LIABILITY OF THE HOTEL

1. The hotel is liable to exercise the duty of care of an ordinary merchant with the performance of its obligations arising from the contract. Claims of the customer for reimbursement of damages are precluded except for such which result from death, injury to body or health and the hotel is responsible for the breach of the obligation, other damage which is caused by an intentional or grossly negligent breach of obligation and damage which is caused from an intentional or negligent breach of obligations of the hotel which are 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. 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 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 to a minimum.
2. The hotel is liable to the customer for property brought into the hotel in accordance with the statutory provisions, i.e., up to one hundred times the room rate, not to exceed € 3,500.00. for cash, securities and valuables up to € 800.00. Cash, securities and valuables up to a maximum value of € (*insert insured amount of hotel*) may be stored in the hotel safe or room safe. The hotel recommends that guests make use of this possibility.
3. Insofar as a parking space is provided to the customer in the hotel garage or a hotel parking lot, this does not constitute a safekeeping agreement, even if a fee is exchanged. The hotel assumes no liability for loss of or damage to motor vehicles parked or manoeuvred on the hotel's property and the contents thereof, except for cases of intent or gross negligence. The above-mentioned No. 1, sentences 2 to 4 *supra* shall apply respectively.
4. Wake-up calls are carried out by the hotel with the 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 above-mentioned No. 1, sentences 2 to 4 *supra* shall apply respectively.

VIII. FINAL PROVISIONS

1. Amendments or supplements to the contract, the acceptance of applications or these General Terms and Conditions for Hotel Accommodation should be made in writing. Unilateral amendments and supplements by the customer are not valid.
2. Place of performance and payment is the location of the hotel's registered office.
3. In the event of dispute, including disputes for checks and bills of exchange, the courts at the location of the hotel's registered office according to corporate law shall have exclusive jurisdiction for commercial transactions. Insofar as a contracting party fulfils the requirements of section 38, para. 2 of the German Code of Civil Procedure and does not have a general venue within the country, the courts at the location of the hotel's registered office according to corporate law shall have jurisdiction.
4. The contract is governed by and shall be construed in accordance with the laws of the Federal Republic of Germany. The application of the UN Convention on the International Sale of Goods and the conflict of laws are precluded.
5. Should individual provisions of these General Terms and Conditions for Hotel Accommodation be or become invalid or void, the validity of the remaining provisions shall remain unaffected thereby. The statutory provisions shall also be applicable.