

## **General Terms and Conditions of TRAVEL PARTNER GmbH VALID FOR SERVICE PARTNERS – B2B (Austria and Germany):**

**The current English-language version of the General Terms and Conditions for B2B Service Partners is expressly not part of the contractual relationship between Travel Partner GmbH and the respective Contractual Partners. This serves only to better inform the Contractual Partner. Only the German-language version of the General Terms and Conditions for B2B Service Partners forms part of the Agreement, available at <https://www.travel-partner.com/agbs-oesterreich-und-deutschland-b2b-02-2021/>, as confirmed in writing and acknowledged by the Contractual Partner in the respective Agreement.**

### **1. General**

1.1 The following general terms and conditions (hereinafter abbreviated as T&Cs) apply to all group and FIT contracts (bed allocation or guaranteed occupancy contracts etc.) concluded with the company Travel Partner GmbH, Austrasse 2a, 6352 Ellmau, Austria (hereinafter referred to as “Travel Partner”). Any Terms and conditions of the contractual partner are to have no validity, even if the contractual partner submits their own terms and conditions before the conclusion of the contract even if Travel Partner does not expressly reject the partner’s own T&Cs.

1.2 The contractual partner confirms that it is a business as defined by the VAT Act and is entitled to detail VAT on its invoices. The contractual party does not avail itself of the small business exemption, neither under German nor Austrian VAT law. It expressly agrees with the provision of credit notes by Travel Partner as defined by § 11 (8) UStG 1994 (Value Added Tax Act).

1.3 Travel Partner undertakes to market the object of the Agreement using suitable advertising measures in an appropriate manner in line with the prevailing opportunities. The Contractual Partner undertakes to provide suitable text material as well as reproducible image material of adequate quality free of charge and free of any third-party rights.

1.4 Up-to-date and printable image material will be sent to Travel Partner in a ready-to-print digital form together with any text material. Travel Partner reserves the right to refrain from performing the contractually agreed marketing services should the images not arrive at the office of Travel Partner in good time or not in sufficiently good quality. Furthermore, the provisions of Point 2.2 shall apply. The Contractual Partner has all copyright and usage rights to the text and image material provided. This is free of any copyright obligations in favour of third parties and can be used without limitation, i.e. worldwide, perpetually and freely transferable by Travel Partner and its parent, subsidiaries and affiliated companies and free of charge for all advertising activities (catalogues, brochures, flyers, internet, social media etc.), and can also be passed on to third parties. This granting of rights also includes the publication of text and image material in analogue and digital format, copying them, publicly reproducing them, making them available for retrieval and saving them in databases, sending them as well as processing them and amending them as desired.

In the event of any claim (copyright, usage rights etc.) by third parties against Travel Partner due to the text and image material made available by the Contractual Partner and used by Travel Partner, the Contractual Partner undertakes to comprehensively indemnify Travel Partner against all claims (justified or unjustified); this also applies to all expenses related to the defence against such claims.

1.5 The Contractual Partner warrants that their contractual accommodation including facilities and equipment shall be in line with legal and regulatory regulations during the

contract period, in particular with regard health and safety (general construction, fire protection, hygiene, lift maintenance etc.) This also applies to the official safety measures and policies adopted in connection with COVID-19. Furthermore, the contracted partner must provide sufficient insurances, in particular liability insurances for the building and business. The contractual partner is obliged to submit all valid certification of insurance relating to the nature and scope of liability insurance without delay if specifically requested by Travel Partner to do so.

## **2. Basis of the transaction**

The following shall apply in the event that specific reference to the basis of the transaction have not already been made in the underlying contract (for example with regard to packaged services, etc.):

2.1 The contractual partner expressly understands that Travel Partner may combine bed allocations from the underlying contract with other services (musical events, cultural events, day trips, boat trips etc.) and that these are covered by these T&Cs. The packaged tour arrangements are then sold on to third parties or operated by Travel Partner itself (sales partners, tour operators, end customers, etc.). The combined services that constitute the basis of the transaction for conclusion of the contract shall be indicated separately at the time of the conclusion of the contract or at the submission of the booking overview. Should performance of the combined services of the package tour explicitly listed in the contract or the submitted booking overview be impossible or possible to only a limited extent – for whatever reason – Travel Partner is entitled to withdraw from this contract in full or in part free of charge without observing a period of notice (Point 5 does not apply in this case). Any advance payments already made must be refunded by the contractual partner.

2.2 The contractual partner also expressly understands that Travel Partner and its sales partners (tour operators etc.) require sufficient lead time for the marketing and/or sale of the contracted service(s) in the respective source or target markets. Should the marketing and/or sale of the contracted service(s) be impossible or possible to only a limited extent or be economically infeasible – for whatever reason – Travel Partner is entitled to withdraw from this contract in full or in part free of charge without observing a period of notice (Point 5 does not apply in this case). Any advance payments already made must be refunded by the contractual partner.

## **3. Purchase prices**

3.1 The agreed purchase prices are fixed prices. The prices are indicated in the respective underlying contract to these T&Cs (“PP” = purchase prices, “LP” = list prices). The purchase prices must be at least 25% lower than the list prices of the contractual partner. The contractual partner is responsible for the correctness of the list prices indicated in the respective contract. Should the contractual partner offer lower prices than those indicated in the list prices in other sales channels (outside of this contract), this shall entitle Travel Partner to a correction of the purchase prices by the same percentage, so that the required and agreed commission margin (25%) is re-established.

3.2 In order to protect Travel Partner and its customers (sales partners, tour operators, etc.) who invest significant sums in the production of brochures and other advertising, the contractual partner undertakes to treat the agreed prices with strict confidentiality and not to pass on any information concerning these to any third parties, in particular not to any tour operators, sales partners etc. nor their agents or employees.

## **4. Reservation and booking**

4.1 The contractual partner accepts substitute persons for booked guests free of charge until such time as the customers arrive.

4.2 The contractual partner is entitled to demand a booking overview from Travel Partner at any time. Any other assignment of beds is only permissible if there are any free beds available before the intended arrival at the time the agreed allocation expires.

4.3 With a view to smooth cooperation, the contractual partner undertakes to request the booking status from Travel Partner in writing (email is sufficient), in order to prevent incorrect bookings, double bookings, overbookings, etc. The written request must be made up to 3 working days before the agreed chargeable cancellation period. Should the contractual partner fail to request the booking status in writing within this period, the free-of-charge cancellation periods indicated in Points 5.2 and 5.3 are extended until such time as the respective written request is received by Travel Partner, whereby Travel Partner is then entitled to another period of 48 hours to make the respective cancellations and thus be in a position to send the up-to-date booking status.

4.4 If not expressly agreed, the allocation of beds agreed in the holiday-FIT contract remains bookable for Travel Partner until the day of arrival, even after the agreed allocation. This remains valid until such time as the contractual partner does not expressly recall the allocation in writing.

4.5 Any recall of allocations or requests for booking stops may only be sent to Travel Partner in writing before the agreed expiry of the allocation and do not become valid until written reconfirmation has been received.

4.6 The Contractual Partner undertakes, to the best of their ability and means, to accommodate end customers of Travel Partner without prior notice on presentation of a booking confirmation.

## **5. Cancellation terms**

5.1 Beds from the (FIT and group) allocations that are not required shall be taken back by the contractual partner without any cancellation fees. Both parties are obliged to mitigate damages in the event of a cancellation. Insofar it is verifiably impossible to otherwise rent out the beds, the following cancellation terms shall apply:

5.2 Cancellation terms for FIT bookings:

For bookings based on a holiday-FIT contract: up to 13 days prior to arrival 0%, 12 to 7 days prior to arrival 20%, 6 days to 1 day prior to arrival 40% and on the day of arrival /no show 70% (where this is a function of the contractually agreed purchase price). All further claims for damages are excluded. Bookings made by Travel Partner within the cancellation period can be cancelled free of charge and fees up to 72 hours after the booking was made. Should this period include a Sunday or an Austrian public holiday, the period is extended by 24 hours. The accommodation provider has no right of cancellation.

Irrespective of the cancellation periods or cancellation fees indicated in this point, Travel Partner is entitled to cost-free cancellation up to 24 hours prior to arrival in the case of bookings based on a city-FIT contract. The accommodation provider also has no right of cancellation in the case of a concluded city-FIT contract.

5.3 Free-Sale Clause:

Furthermore, if these general T&Cs are based on a Free-Sale agreement, then the contractual partner must allow Travel Partner unlimited availability on conclusion of the contract. The contractual party may stop the free availability granted to Travel Partner at any time in writing (email is sufficient).

Upon receipt of the requested booking stop, Travel Partner is allowed time to make further bookings until 5:00 p.m. of the following working day (Monday to Friday), which must be accepted by the contractual partner and the guests accommodated in compliance with the contract. Any basic allocation deriving from the contract remains valid in the case of a stop of availability by the contractual partner.

#### 5.4 Cancellation terms for group bookings:

up to 21 days prior to arrival 0%, 20 to 7 days prior to arrival 40%, 6 days to 1 day prior to arrival 60% of the total amount and on the day of arrival /no show 70% (refers to the contractually agreed purchase price).

The contractual party has no right to a cancellation fee if the number of passengers travelling in the group reduces by up to 10%. Should the number of participants of the travel group reduce by more than 10%, the contractual partner is entitled to a cancellation fee for those participants in excess of the 10%, whereby the cancellation periods and cancellation fees pursuant to Point 5.4 shall apply in this case. (For the sake of clarification: in the case of a group of 20 booked persons, 3 persons do not arrive [no show], there is no entitlement to cancellation fees for 2 persons, for 1 person there is an entitlement to cancellation fees to the amount of 70% of the contractually agreed purchase price). There is no upper limit for cancellations, so that in the case of several booked dates the contractual partner must also accept cancellations of over the half of the booked dates. Bookings made by Travel Partner within the cancellation period can be cancelled free of charges and fees up to 72 hours after the booking was made. The accommodation provider also has no cancellation right in the case of group contracts.

## 6. Duration of the contract

6.1 The agreed duration of the contract is binding. Travel Partner must be notified without delay in writing in the event of a curtailment of the duration, for any reason whatsoever, on the part of the contractual partner. This shall not become valid until written reconfirmation has been given. The contractual partner is liable for any costs incurred in full (additional expenses, costs of changing bookings).

6.2 The contractual partner hereby grants Travel Partner an option for the next summer or winter season at the agreed conditions, which can be exercised by Travel Partner no later than 3 months before the start of the (next) respective season.

## 7. Contractually compliant accommodation

7.1 In the case of contractually non-compliant accommodation, the contractual partner is liable for all damages arising from non-performance or inadequate performance, of any nature whatsoever (also of an intangible nature). Claims for compensation also encompass such payments made expediently by Travel Partner to customers for reasons of litigation avoidance (price reduction, compensation payments in the case of changing bookings to substitute accommodation etc.). The burden of proof lies with the contractual partner for any inappropriateness or dispensability of the payments made by Travel Partner.

Irrespective of this, Travel Partner reserves the right in the event of contractually non-compliant accommodation to withdraw without compensation from the underlying contract in full or in part or to accommodate the entire booked group or all guests with FIT bookings in another substitute accommodation of the same or higher rating at the expense of the contractual partner. For each rebooking made, the Contractual Partner shall pay a sum of € 50.00 for the associated additional expenses of Travel Partner.

7.2 Only with the express written agreement of Travel Partner is the contractual partner permitted to make complete or partial changes to bookings from guests to an accommodation provider other than that agreed in this contract. A contractual penalty is agreed in the event of violation, amounting to 100% of the contractually agreed purchase price for unauthorised changes in bookings.

7.3 Unless agreed otherwise in the contract, the contractual partner undertakes not to provide any guests booked in by Travel Partner (group travels, FIT, etc.) with any qualitative and/or inferior services (breakfast, lunch, evening meal, wireless LAN access, entry to wellness facilities etc.), so that they receive the same typical accommodation and all other services that all other guests of the contractual partner receive.

7.4 The contractual partner acknowledges that the beds assigned to Travel Partner, irrespective of the right of transfer in Point 2.1, are assigned to tour operators/sales partners with the purpose of renting these on to guests from all nations. There are no restrictions with regard to nationality, gender, religion etc.

7.5 The contractual partner undertakes to make every effort to provide redress for any justified claims made by guests during their stay. It is obliged to reply to complaints in writing within 5 days, otherwise Travel Partner will assume that there is a justified complaint and will pay compensation payments (price reduction etc.) in order to avoid litigation (see also Point 7.1) at the expense of the contractual partner. Justified complaints must be compensated in an adequate manner by the contractual partner. The contractual partner is also liable for any loss of profit arising from the termination or reduction in the business relationship between Travel Partner on the one hand and the tour operator/sales partner on the other as a consequence of a breach of contract on the part of the contractual partner.

7.6 The contractual partner must notify Travel Partner without delay of any other circumstances that could impair the fulfilment of the contractually agreed service(s). These include in particular any construction, repair or maintenance works, dust or noise disturbances (including anything in the direct vicinity of the object of the contract) as well as any imminent enforcement measures which could negatively impact on the guest's experience.

7.7 Travel Partner is not liable for any damage caused by tour operators, their employees or guests in connection with their stay in the contracted accommodation.

7.8 In the event of any claim by third parties against Travel Partner due to non-contractual service performance by the Contractual Partner, the Contractual Partner undertakes to comprehensively indemnify Travel Partner against all claims (justified or unjustified); this also applies to all expenses related to the defence against such claims.

## **8. Payment**

8.1 On departure of the guests the contractual partner shall send an invoice (incl. guest coupons and/or tour operator vouchers) to Travel Partner for settlement. Subsequent payments are based solely on the submitted invoices taking into account the contractually agreed due date for payment. Unless otherwise agreed to the contrary, Travel Partner undertakes to make the payment by bank transfer without deduction after contractual fulfilment within 30 days (Austrian working days) after departure of the guests and receipt of the invoice incl. vouchers.

8.2 In the event that the tour operator refuses payment as a result of complaints from guests or alleged non-performance of one or more of the services agreed in the reservation concerned, payment shall not fall due until such time as the situation has been completely clarified or those concerned have reached an agreement.

8.3 Should any justified claims for damages be made by the tour operator or guests shortly before termination of the contractual relationship, Travel Partner reserves the right to withhold settlement of the last payments until such time as the situation has been clarified.

8.4 Any additional costs arising, in particular due to fulfilment of special wishes of guests not covered in the underlying contract, including for example such things as room upgrades (larger room, better located room, better facilities etc.), accommodation of pets, provision of additional services (cosmetic treatments, wellness offers, consumption of additional meals and drinks), additional overnight stays etc., are to be settled with the guest directly by the contractual partner. Any extra costs incurred as a result of incorrect personal data provided by the guests (relating to birthdays etc.) shall also be settled with the guests directly.

## **9. Force majeure/cessation of the basis of the transaction**

Should the performance of the agreed service(s), travel of guests to the object of the contract or the utilisation of the agreed service(s) by guests no longer be possible due to reasons of force majeure (e.g., natural catastrophes of any kind, including storms, earthquakes, floods, landslides, snow chaos; fire; hostage-taking; war; riots; civil war; terrorism; strikes; epidemic; pandemic; border closures; blocking off of geographic areas; food shortages or rationing; obstruction of traffic; interruption in currency trading; lock-outs, travel warnings, governmental restrictions or measures that impede execution of the service or prevent it from being carried out to its planned extent; as well as all other extraordinary events) or for other reasons (e.g., the cancellation of a concert due to illness of the performer, bankruptcy of the accommodation company, rejection or cancellation of the bundled or individual services etc. pursuant to Point 2.1) that are neither caused by, nor are the fault of Travel Partner, then Travel Partner is permitted to partially or completely withdraw from the underlying contract at its own discretion and without charge. In the absence of fault by Travel Partner, further warranty and compensation claims by the contractual partner are excluded. Advance payments or partial payments already made shall be returned after deduction of the value of any partial services performed. Should a guest depart prematurely due to one of the events mentioned herewith, Travel Partner is not obliged to pay for any services which are subsequently not required or utilised. Travel Partner is not liable for any additional costs that arise on the spot, for example due to the late departure of guests. Such additional costs shall be borne by the contractual partner or, if legally permissible, settled directly with the guests.

## **10. Legal successor and rights of transfer**

10.1 Both Travel Partner and the contractual partner are entitled to transfer the underlying contract in full or in part to any legal successor, whereby the contractual partner requires the prior written approval (by email is sufficient) of Travel Partner for the transfer. Where the contractual partner is concerned, the (partial)legal succession does not come to pass until Travel Partner has received notification from the (partial)legal successor, in which the legal successor bindingly declares to assume all obligations arising from the underlying contract. Only after receipt of a written declaration by the legal successor can Travel Partner no longer discharge the debt to the (original) contractual partner. Moreover, the (original) contractual partner is liable in full for the performance of the contract vis-à-vis Travel Partner until receipt of written confirmation.

10.2 Travel Partner shall furthermore be entitled to transfer all rights and obligations arising from the underlying contract to these T&Cs to both its parent, daughter and sister companies as well as to tour operators and travel agents without the prior approval of the contractual partner.

## **11. Non-competition clause**

In order to protect and maintain Travel Partner's customer base, the contractual partner undertakes not to conclude any contracts or agreements directly with a tour operator procured by Travel Partner or any agent cooperating with this tour operator (destination management agency, etc.) within a period of two years following the last day of departure. Furthermore, the contractual partner must ensure that no bookings are taken from guests of tour operators procured by Travel Partner during the cooperation with the contractual partner during the period of the restriction of hotel contracts with destination management agencies or other agents agreed in the previous sentence. A contractual penalty is agreed in the event of violation amounting to 50% of the total payments made (gross amount) by Travel Partner or the respective tour operator due to the bookings made in the previous season.

## **12. Data protection**

12.1 The Contractual Partner is obliged to take all necessary data protection measures, in particularly those within the meaning of the GDPR (obtaining the consent of the persons concerned etc.), so that Travel Partner can, as necessary, process personal data for the purpose of the contractual relationship.

12.2 The Contractual Partner is obliged to protect all personal data transferred to them for the performance of the contract by Travel Partner with the appropriate safety and security measures so that they are not visible to (unauthorised) third parties (password access restrictions, access restrictions to certain workstations, pseudonymisation etc), as well as to delete such data without being asked to do so when they are no longer needed for the purposes for which they were being processed by Travel Partner.

12.3 In the event of any claim by third parties against Travel Partner due to data protection regulations not being complied with by the Contractual Partner, the Contractual Partner undertakes to comprehensively indemnify Travel Partner against all claims (justified or unjustified); this also applies to all expenses related to the defence against such claims.

## **13. Severability clause**

13.1 Insofar as these terms do not lay down any specific regulations, the provisions of the cooperative agreement on providing board and accommodation of the Hotel and Accommodation Facilities Association with the Travel Agents Association shall apply in the respectively valid version.

13.2 Should any provision in these T&Cs be invalid, this shall in no way affect the validity of the remaining provisions. In the event of a dispute, any invalid provision is to be replaced by the legally effective provision that comes closest to the contents of the invalid provision and most closely corresponds to the parties' economic interests in the invalid provision.

## **14. Place of jurisdiction/applicable law**

14.1 As substantive law, Austrian law shall apply exclusively to the exclusion of the agreements of the UN Convention on Contracts for the International Sale of Goods (CISG) and the conflict of law rules.

14.2 Exclusive place of jurisdiction for all disputes arising from this contract is the court competent for A-6352 Ellmau in Tyrol.

## **15. Final remarks/written form**

The contractual partner acknowledges that employees of Travel Partner are not entitled to make any commitments or concessions which deviate from these T&Cs. Any deviations may only be applied in writing via a draft by an authorised signatory of the Travel Partner Board of Directors. Verbal subsidiary agreements are therefore deemed invalid and have no bearing on the contract.

### **COVID-19 clause:**

Despite Travel Partner's reasonable best endeavours, recent regulatory restrictions, over which it has no control, significantly impact the ability of guests to freely access accommodation and other services.

Consequently, the provisions of Point 9 shall apply mutatis mutandis in the event of full or partial cancellation by customers of Travel Partner due to imposed regulatory measures, restrictions or other impacts of the COVID-19 pandemic.

Furthermore, the extraordinary uncertainty surrounding the development of the COVID-19 pandemic means that Travel Partner reserves the right to unilaterally withdraw from the contract in full or in part up to the day of arrival. This right of withdrawal and suspension relates to both the duration and scope of the underlying agreements (number of beds etc.). Where such changes occur, both contractual parties shall be released from their contractual obligations. Any expenses incurred up to withdrawal from the contract shall be borne by the contractual parties themselves with any subsequent claims excluded. Any advance payments or partial payments already made are be reimbursed by the contractual partner.

In the event of a full or partial suspension, Travel Partner is entitled to continue to apply these T&Cs to the underlying contract on cessation of the circumstances indicated in Point 9.

In the case of a suspension of the contract or withdrawal from an already partially performed guarantee allocation/fixed rental agreement, the originally agreed guaranteed/fixed rental amount is, of course, not due for full payment. In such a case, invoicing for these services shall be undertaken in accordance with the T&Cs of the underlying contract.