

# General Terms and Conditions of the Accommodation Agreement with Kongresshotel Potsdam am Templiner See

## Section 1 Scope of the agreement

1. These terms and conditions apply to agreements on the rental assignment of hotel rooms for accommodation, as well as all further services and deliveries to the hotel, effected on behalf of the client.
2. The subletting or re-letting of the assigned rooms and their use for purposes other than accommodation, require the prior permission of the hotel in writing, in which case section 540 subsection 1 sentence 2 BGB (German Civil Code) is waived (no special right of termination of the client in the event that approval is denied), insofar as the client is not a consumer.
3. Conflicting or deviating terms of the client will not be recognized by the hotel unless their validity has been expressly agreed. This shall also apply when the hotel unreservedly makes deliveries or performs services for the client in awareness of conflicting terms.
4. Furthermore, the additional provisions agreed on concluding the accommodation agreement apply.

## Section 2 Conclusion of the agreement, partners to the agreement; Limitation

1. The agreement is concluded by the hotel accepting the client's application. The hotel is free to confirm the event booking in writing or in text form. Electronic declarations shall be considered received when the party for which they are intended can access them under normal circumstances and when they are received during the stated business hours of the hotel.
2. The contracting parties are Kongresshotel Potsdam am Templiner See (OSGV Hotel- und Kongress GmbH & Co. Betriebs KG, Am Luftschiffhafen 1, 14471 Potsdam), hereinafter referred to as the hotel, and the client. If a third party made the booking on behalf of the client, the third party and the client together are liable to the hotel, as joint debtor, in respect of all obligations arising from the hotel accommodation agreement.
3. All claims against the hotel that come under the regular knowledge-dependent period of limitation, on principle lapse within one year from commencement (section 199 subsection 1 BGB); claims for compensation lapse within five years – knowledge-independent. Reductions of the period of limitation do not apply to claims due to a premeditated or grossly negligent violation of duty on the part of the hotel.

## Section 3 Services, prices, payment, offsetting

1. The hotel is under the obligation to keep the rooms booked by the client ready until 6 pm and to provide the agreed services.
2. The client is under the obligation to pay the hotel's applicable prices or the prices agreed with the hotel for the assignment of the room(s) and the additional services utilized by the client. This applies also to services and expenses to third parties the hotel incurred on behalf of the client.
3. The agreed prices include all taxes and local duties valid upon conclusion of the contract. Local duties owed by the client according to respective local laws are not included. The prices shall be adjusted accordingly in the case of changes to the legal VAT or the introduction, modification or abolition of local duties affecting the object of the agreement after conclusion of the contract. If the period between conclusion and fulfilment of the agreement exceeds four months and if the hotel's usual price for such services rises, this can raise the contractually agreed price appropriately, at most, however, by ten per cent.
4. The hotel can have its agreement in respect of a client's request for a retroactive reduction of the number of booked rooms, the service provided by the hotel or the client's length of stay depend on an increase of the price of the room(s) and/or other service(s) provided by the hotel.

5. Invoices issued by the hotel that do not bear a due date are payable without deduction within eight days from receipt of the invoice. The hotel is authorized to accelerate accrued claims at any time and to demand immediate payment. If payments are delayed, the hotel is entitled to demand the respective legal amount of default interest of currently 8%, or with regard to legal transactions involving a consumer, of 5% above the base rate of interest. The client reserves the right to prove a lower level of damage, while the hotel reserves the right to prove a higher level of damage. The hotel can demand dunning costs of EUR 10.00 from the client for each dunning notice sent following the delay. The client shall bear all further costs arising in the course of collecting the receivables. In the event that invoices are overdue, the hotel reserves the right to book the amount due from the credit card given as guarantee.
6. The hotel is entitled to demand an adequate prepayment or surety in the form of a credit card guarantee, a down payment or similar from the client on conclusion of the agreement or at a later point in time. The amount of the prepayment and the payment dates can be agreed in writing or in text form in the contract. Prepayments or sureties for package tours will not affect legal provisions.
7. Where reasonable, e.g. if the client is in arrears with payment, the hotel is entitled to demand an increase of the prepayment or surety within the meaning of subsection 6, agreed in the contract – up to the full remuneration agreed – even after concluding the agreement and until the client's stay at the hotel commences.
8. The hotel is also entitled to demand an adequate prepayment or surety from the client on commencement and during the client's stay within the meaning of subsection 6 above, in respect of existing and future receivables arising from the agreement, insofar as such a payment has not already been made in accordance with subsection(s) 6 and/or 7 above.
9. The client can only offset, reduce or exercise a right of retention against a claim of the hotel with an indisputable or legally valid claim.

## Section 4 Cancellation by the client/Non-utilisation of hotel services (no show)

1. Client cancellation of the agreement concluded with the hotel is only possible if a right of cancellation has been expressly agreed in the contract, if another legal right of cancellation exists, or if the hotel expressly agrees to cancellation of the contract. Agreement on the right of cancellation or acceptance of cancellation of the contract shall be made in writing.
2. Insofar as the hotel and the client have agreed in writing or in text form on a deadline for the cost-free cancellation of the contract, the client can withdraw from the agreement until said deadline without incurring payment or compensation claims of the hotel. The client's right of cancellation shall expire if the client does not assert its right of cancellation to the hotel in writing within the agreed period, provided it is not a case of delay in performance by the hotel or an impossibility of performance for which the hotel is responsible.
3. If a right of cancellation has not been agreed or has already expired, if no legal right of cancellation or termination exists and the hotel does not agree to a cancellation of the contract, the hotel shall retain its right to the agreed remuneration despite non-utilization of the service. The hotel shall take into account the income from renting out these rooms to other parties as well as the expenses saved. If the rooms are not rented out to other parties, the hotel is entitled to deduct a lump sum for the expenses saved. In this case the client shall pay at least 90% of the contractually agreed price for overnight accommodation with or without breakfast as well as for package arrangements with external services, 70% for half board and 60% for full board. The client is free to prove that the aforementioned claim has not been incurred or not to the extent claimed.

## Section 5 Cancellation by the hotel

1. Insofar as it has been agreed in writing or in text form that the client can cancel the agreement free of charge within a specified period, the hotel is also entitled to cancel the agreement during this period if inquiries by other clients exist in respect of the contractually agreed rooms and the client does not – at the request of the hotel – waive its right of cancellation. This applies correspondingly, if an option is granted and other requests have been received but the client is not prepared to make a firm booking within a period determined by the hotel. In this case 'firm booking' means that an accommodation agreement is concluded on this day and that the originally agreed, free period of cancellation is suspended.
2. If a prepayment or surety, agreed or requested in accordance with section 3 subsection(s) 6 and/or 7 is not made/paid, even after expiry of an adequate period of grace, the hotel is also entitled to cancel the agreement.
3. Furthermore, the hotel is entitled to withdraw from the agreement with extraordinary notice for factually justified reasons, e.g. in the event that
  - force majeure or other circumstances beyond the hotel's control render fulfilment of the agreement impossible;
  - rooms or areas are booked with misleading or false information or the omission of essential facts (identity of the client, purpose of renting or of the client's stay, ability to pay, etc.);
  - the hotel has justified reasons to assume that the utilisation of the hotel's services may put the smooth operation, security or reputation of the hotel at risk, without this being attributable to the hotel's area of control or organisation.
  - the purpose or occasion of the client's stay is unlawful;
  - an unauthorized subletting or reletting occurs according to section 1 subsection 2.
  - the hotel has gained knowledge that the financial situation of the client has considerably worsened since conclusion of contract, especially if the client does not settle due claims of the hotel or does not provide sufficient security, so that payment claims of the Hotel therefore appear to be endangered;
  - the client has filed an application to open insolvency proceedings on his assets, has submitted a statutory declaration in accordance with section 807 of the German Code of Civil Procedure (ZPO), has initiated out-of-court proceedings to settle debts or has suspended payments;
  - insolvency proceedings are opened concerning the assets of the client, or the opening of such proceedings is refused due to lack of assets or for other reasons.
4. The hotel is entitled to prohibit or demand the termination of events with unauthorized purposes, such as job interviews, sales, promotional or similar events.
5. The hotel shall immediately inform the client before exercising its right of cancellation.
6. The hotel is entitled to charge a lump sum for compensation claims. Sections 4 subsections 2 and 3 shall apply accordingly. The client is free to prove in such cases that no damage or only minor damage was incurred.

## Section 6 Provision, handover and return of rooms

1. The client does not acquire a claim for the provision of specific rooms. If these are, however, confirmed in the order confirmation and/or accommodation agreement, but unavailable, the hotel shall endeavour to find an equivalent substitute within the hotel itself or in other, comparable objects.
2. Booked rooms are made available to the client from 2 pm onwards on the agreed arrival date. The client is not entitled to an earlier provision of the room(s). Insofar as a later arrival time was not expressly agreed or the respective room was not paid in advance, the hotel is entitled to assign booked room(s) oth-

erwise after 6 pm, without the client being able to assert a claim against the hotel.

3. On the agreed departure date, the room(s) shall be vacated and made available to the hotel by 11 am, at the latest. After this time, the hotel can charge 50% of the full accommodation price (list price) until 6 pm for the use of the room above and beyond the time agreed in the contract, due to the delayed vacation of the room; after 6 pm the hotel can charge 100%. The client may not derive any contractual claims from this. The client is at liberty to prove that the hotel did not incur any or a much lower claim for utilisation.
4. The maximum number of persons per room is restricted to one person in a single room and to three persons in a suite. Children of up to 14 years of age who reside in their parents' room are accommodated free of charge. In this case, however, additional services, which are included in the room price, do not – apply to the children. The accommodation of pets requires the prior express agreement of the hotel and will attract a charge.

## Section 7 Liability of the hotel

1. The hotel undertakes to fulfil its contractual obligations with the due diligence of a prudent merchant in the case of wilful intent, malice, gross negligence, the absence of guaranteed quality, as well as damages it has caused resulting from injury to life, body or health according to the statutory regulations. In the case of slight negligence the hotel shall only be liable if it has violated an essential contractual obligation (cardinal obligation or essential secondary obligation) or in the case of impossibility or delay. In the case of the slightly negligent violation of a cardinal obligation or essential secondary obligations, impossibility due to slight negligence or delay due to slight negligence, liability shall be limited to typical and foreseeable damage. Liability for indirect or consequential damages shall be excluded in the case of slightly negligent behaviour. Any violation of duty by the hotel is equivalent to that of a legal representative or vicarious agent. Additional damage claims are excluded. If failures or defects in the hotel's services arise, the hotel shall endeavour to remedy them upon its taking notice or upon the immediate complaint of the client. The client shall contribute, within reason, to remedying the failure and to keeping potential damage low. Moreover, the client is obliged to inform the hotel in good time about the possibility of an unusually high damage occurring.
2. The hotel is liable for any items brought into the hotel by the client, in accordance with legal provisions – up to hundred times the room price but, at most EUR 3,500, and up to EUR 800 in respect of money and valuables. Money and valuables up to a maximum level determined by the hotel's insurance total can be deposited in the hotel safe. The hotel recommends this option. Liability claims lapse if the client does not give notice to the hotel with immediate effect (section 703 BGB), on gaining knowledge of the loss, destruction or damage. Liability claims can only be asserted if the room(s) or containers, in which the items were kept were locked.
3. Insofar as a parking space is made available to the client in the hotel's garage or on a parking lot owned by the hotel – even against a fee – this does not constitute a safekeeping agreement. If motor vehicles that are parked on the premises of the hotel, or their contents are lost or damaged, the hotel cannot be held liable unless this was caused through premeditation or gross negligence. Subsection 1 shall apply correspondingly.
4. The hotel provides wake-up calls with great care. It does not, however, accept liability for the calls. Messages, mail and consignments of goods for guests shall be treated with care. The hotel shall ensure the delivery, storage and – upon request and for a fee – the forwarding of the same. Subsection 1 shall apply accordingly.
5. The hotel is entitled to hand over the aforementioned items to the local lost property office after a storage period of no more than three months and may charge the client an appropriate fee. If the items do not have a recognizable value, the hotel reserves the right to destroy the items after the three-month period. Compensation claims not based on wilful intent or gross

negligence are excluded. Aforementioned subsection 1 shall apply accordingly.

## **Section 8 Confidentiality and data protection**

1. The hotel undertakes to treat in the strictest confidence all information and documents disclosed to it during the execution of the respective contract, in particular business and operating secrets of customers, and to oblige its employees to act accordingly. The subject and content of the corresponding contract must also be treated confidentially. Confidential information may not be disclosed to third parties and must exclusively be used for the purposes specified. This confidentiality obligation applies beyond the termination of the respective contractual relationship.
2. Data received or taken note of is only processed and used by the hotel within the scope of the valid data protection regulations. The hotel undertakes to observe and comply in particular with the provisions of the General Data Protection Regulation (GDPR).
3. The hotel further undertakes not to process or use data provided or taken note of, neither for its own purposes, nor to disclose it to third parties, unless the processing or use is in accordance with the provisions of the GDPR, or the customer has given his consent.
4. The statutory disclosure requirements remain unaffected.

## **Section 9 Final provisions**

1. Amendments or supplements to this agreement, of the acceptance proposal or these terms and conditions of accommodation must be in writing and express reference made to the agreement or the terms and conditions; this also applies to amendments of the written form requirement. Unilateral amendments or supplements by the client shall remain ineffective.
2. The place of performance and payment is Potsdam.
3. The exclusive place of jurisdiction for commercial transactions is Potsdam – also for cheque and bill disputes. Insofar as a contracting party meets the requirements of section 38 subsection 2 ZPO (German Code of Civil Procedure) and does not have a general place of jurisdiction in Germany, Potsdam is deemed to be the place of jurisdiction.
4. The law of the Federal Republic of Germany applies. The application of CISG and the conflict of law provision is excluded.
5. If individual provisions of these General Terms and Conditions are or become ineffective or void, this shall not affect the effectiveness of the remaining provisions. In this case, the contracting parties undertake to replace the ineffective or void provision by an effective provision that corresponds with the commercial purpose of the ineffective or void provision. Incidentally, the legal regulations shall apply.
6. Separate terms and conditions apply to events.