

Terms of contract for the arrangement and provision of guided tours conducted by tour guides working on behalf of CTW Congress • Tourismus • Wirtschaft Würzburg

Dear Guests,

The following terms of contract on the one hand regulate the legal relationship between **Congress • Tourismus • Wirtschaft Würzburg**, a proprietary operation of the City of Würzburg and referred to in the following as "CTW", and yourself, referred to in the following as "Customer" or, as applicable, with the person/institution booking the guided tour. On the other hand, they regulate the **legal relationship between you and the tour guide arranged for by CTW**. To the extent that they are effectively referred to and included therein, these Terms of Contract shall form integral content of the **Contract of Service** coming into force between yourself and the respective tour guide in the event of your booking. For these reasons you are kindly requested to **carefully read through these terms and conditions**.

1. Status of CTW

1.1. The status of CTW in this context is **solely that of agent** between the **Customer** – or, as applicable, the party booking the guided tour – and the **tour guide** conducting said tour.

1.2. CTW will therefore accept no liability for services, personal or material damage arising from or in connection with the guided tour in question. Any liability arising to CTW from the agency relationship will not be affected hereby.

2. Status of the tour guide, applicable legal provisions

2.1. The legal relationship between the **tour guide** and **Customer** – or, as applicable, the party booking the guided tour – shall be primarily governed by the agreements concluded with the **tour guide** complementarily to these terms of contract and alternatively to the legal provisions set down in **Article 611 et seq. of the German Civil Code relating to contracts for the provision of services**.

2.2. Unless otherwise provided for under mandatory international or European law, the entire legal and contractual relationship with the **tour guide** and CTW shall be exclusively subject to the law of the Federal Republic of Germany.

3. Conclusion of contract, status of group customer

3.1 In effecting a **booking**, which may be made in writing, by fax, via eMail or the Internet, the **Customer** or the booking party bindingly offers to **enter into a service contract** with the respective **tour guide**, represented by CTW as his legal representative, on the basis of the specifications relating to the respective tour and of these terms of contract.

3.2 If the booking is effected by a third party referred to in these terms of contract as "**group customer**", i.e. an institution or a company (private group, adult education institution, school class, association, tour operator, incentive or event agency, travel agency), the latter as **sole booking party** shall be CTW's contracting partner within the framework of the agency contract or the contract with the **tour guide** within the framework of the service contract to the extent that said **group customer** is not expressly acting as a legal representative of the ultimate participants under the concluded agreements. In such case, the **group customer shall be fully liable for payment of any agreed remuneration or any cancellation fees**.

3.3 If it has been expressly agreed that the **group customer** is effecting a booking as a legal representative of the ultimate participants, said **group customer** shall be **personally and directly liable for all obligations of the ultimate participants** to the extent that he has taken over these obligations by virtue of express separate declaration.

3.4 The guided tour service contract shall come into force upon CTW's confirmation as representative of the tour guide. Said confirmation is not bound by any specific formal requirements. As a rule, however, except in the case of bookings effected at very short notice, CTW shall send a written copy of the booking confirmation to the Customer or the party ordering the tour. In the case of binding telephone bookings, the contract shall be legally valid independently of any receipt of the written copy of the booking confirmation and of any agreed advance payment.

4. Services to be performed, right of substitution

4.1 Services to be provided by the **tour guide** comprise performance of the guided tour in accordance with the specifications and any additional agreements.

4.2 Unless expressly agreed otherwise, the performance of the guided tour is not owed by a specific tour guide but instead by one selected by CTW on the basis of having the necessary qualifications.

4.3 Even if a specific tour guide has been personally named and booked, CTW reserves the right in the event of his justified inability to conduct the tour, (in particular due to illness) to substitute him with another suitably qualified tour guide.

4.4 The scope of duties owed shall derive from the specifications and any additional agreements. Any third-party information and warranties (especially from travel agencies, hotels, transport companies) on the

scope of the contractual services in deviation from the specifications or the agreements made with CTW and/or with the **tour guide shall not be binding upon CTW and the tour guide**.

4.5 Any changes or amendments to the contractually offered services shall require an explicit agreement with CTW.

4.6 Changes to essential services in deviation from the agreed content of the contract that become necessary after the conclusion of the contract (especially also changes in the tour schedule) and were not brought about by the **tour guide** contrary to the principles of good faith shall be admissible to the extent that the changes are insignificant and do not relevantly impair the overall concept of the tour.

4.7 Details on tour duration are of an approximate nature.

5. Prices and payment

5.1 Agreed prices include the performance of the guided tour and additionally offered or agreed services.

5.2 Admission fees, catering expenses, as well as costs on public and private transport, city maps, leaflets, museum guides, tour costs within the framework of the visited sights included in the guided tours are only included in the agreed price if these are specifically listed as guided tour services or additionally agreed.

5.3 Should the tour commence or end outside of the Würzburg city centre, the **tour guide** will then have entitlement to reimbursement of the travel expenses thus incurred and for the additional time involved.

5.4 Unless agreed otherwise, in particular in respect of a downpayment, the agreed **remuneration shall become due in cash upon commencement of the guided tour**. Payment by cheque or credit card will not be accepted. Payment with vouchers issued by third parties shall only be valid if subject to a corresponding and specific agreement with CTW.

5.5 Insofar as the **tour guide** is ready and able to perform the agreed services and there are no justified reasons for any statutory or contractual right of retention on the part of the **Customer** or the booking party, there shall be no entitlement to the agreed services without full payment prior to the commencement of the tour.

5.6 The payments do not include value added tax.

5.7 The **maximum number of participants per tour guide** is, for example, **50 on tours in the Fränkische Weinland (Franconian Wineland) or along the Romantische Strasse (Romantic Road)**, or **35 on city sightseeing tours** (also on combined bus/walking tours).

5.8 Should the number of participants turning up for the guided tour exceed an agreed total or the maximum number of 35 persons per tour guide without this having been expressly agreed beforehand, the **tour guide** will then have entitlement to call in an additional tour guide. Irrespective of the number of people by which the agreed number of participants is exceeded, this additional tour guide shall be fully paid according to the applicable rates of remuneration. The group of participants will then be split up as the two tour guides see fit. Should it not prove possible to find an additional tour guide, the originally commissioned **tour guide** shall then have entitlement to double the applicable rate of remuneration for a single tour guide.

5.9 Should the **Customer/ordering person** notify CTW beforehand that the number of participants will exceed the agreed total and it should not then prove possible to engage the services of an additional tour guide due to lack of availability, the commissioned **tour guide** shall accordingly have entitlement to remuneration at one and a half times the applicable rate for a single tour guide.

6. Failure to use ordered services

6.1. There shall be no entitlement to any reimbursement of payments which have already been made if the **Customer** or the booking party does not use the agreed services either in whole or in part for reasons for which the **tour guide** or CTW cannot be held responsible and even though the **tour guide** is ready and able to provide the services.

6.2. The agreed remuneration shall be subject to the corresponding statutory regulations (§ 615 paragraphs 1 and 2 of the German Civil Code BGB):

a) The agreed remuneration is to be paid without entitlement to any

subsequent performance of the guided tour at a later point in time.

b) The **tour guide** shall, however, allow any expenses not incurred as result of said failure to take part in the guided tour to be deducted from the remuneration as well as any remuneration he obtains or maliciously refrains from obtaining through placement elsewhere of agreed services.

7. Cancellation, withdrawal and change of booking by the Customer or booking party

7.1. The **Customer** or the booking party may cancel the order, free of charge, after conclusion of the contract with the **tour guide** or **CTW** up to the fourth working day before the agreed commencement of performance. **Notice of cancellation may be given by fax (09 31 / 37 36 52) or eMail (fuehrungen@wuerzburg.de) during the business hours of CTW's head office (Monday – Thursday 8:30 a.m. - 5:00 p.m., Friday 8:30 a.m. - 1:00 p.m.).** Said cancellation shall not be considered valid until confirmed in writing (fax or email) by **CTW**.

7.2. Notice of cancellation given later than specified in Section 7.1 shall make the cancelling party liable for payment of compensation to the amount of 90% of the agreed remuneration. The provision set down in Article 6.2 above shall apply correspondingly. In such case the **tour guide will invoice the Customer or booking party directly**.

7.3 If applicable, the **Customer** or booking party shall have entitlement to furnish proof that the **tour guide** has suffered no loss or that the loss sustained is less than the invoiced amount.

7.4. Changes of booking (change of date, time, tour route/schedule and of any essential services and modalities involved in the guided tour) may be made, free of charge, up to the fourth working day before the agreed date of performance, after which it will only be possible to make changes by cancelling the booking in accordance with the above conditions and subsequently making a new booking. Such changes shall not be considered valid until confirmed in writing by **CTW**.

8. Liability of CTW and the tour guide

8.1. For details of CTW's liability, please refer to Section 1.2. of these terms of contract.

8.2. Liability of the tour guide for any and all non-physical damage **shall be excluded** to the extent that such damage is not the result of intent or gross negligence on the part of the **tour guide**.

8.3. The **tour guide** shall not be liable for any services, actions or omissions on the part of catering businesses, facilities, supporting institutions of tourist attractions/sights or any places that are visited within the framework of the tour unless he bears responsibility in whole or in part for the damage in question.

9. Tour times, duties and obligations of the Customer

9.1. The Customer or group customer is required to **indicate a mobile phone number** when booking or in due time before the agreed date of the tour, via which they can be contacted should the need arise. As a rule, **CTW** shall likewise give the Customer or an appropriately nominated person the **mobile phone number of the respective tour guide**.

9.2. Agreed tour times shall be strictly adhered to. If subject to any delay, the **Customer** shall accordingly notify the **tour guide** at **latest by the agreed time of the guided tour's commencement** and indicate the probable time of arrival. The **tour guide** may **refuse to postpone the tour's time of commencement** if such postponement is objectively impossible or unreasonable, in particular if subsequent tours or other compelling business or private appointments of the **tour guide** cannot be kept as a result. **Generally speaking, any postponements over 60 minutes shall entitle the tour guide to cancel the tour.** The **tour guide's entitlement to payment shall remain, and the provision set down in Section 6 shall apply correspondingly.** In such case the **tour guide will invoice the Customer or booking party directly**.

9.3. Any delay in commencement of the guided tour for which **CTW** and/or the **tour guide** **cannot be held responsible** will in general **not give rise to any entitlement to an extension of the tour's duration**. Should the group arrive late for the tour, the **tour guide** and the **Customer** or the group customer shall agree as to whether the guided tour should be correspondingly shortened or – if the **tour guide** has no obligations to meet elsewhere – whether the tour's originally agreed duration can be adhered to. In such case the **tour guide's** remuneration shall be calculated on the basis of the period comprising the wait and the actual duration of the guided tour.

9.4. The **Customer** or the representative of the group customer is obligated to **notify the tour guide of any shortcomings in the tour and agreed services immediately and to demand appropriate remediation**. Any claims in respect of poor or incomplete performance on the part of the **tour guide** shall not become forfeited if such notification of shortcomings is not made for reasons for which the **Customer** cannot be held responsible.

9.5. The **Customer** or the booking party shall only be entitled to **cancel**

or terminate a tour after its commencement if the performance of the **tour guide** is substandard and such shortcomings are not remedied in spite of corresponding notification thereof. **There shall be no entitlement to reimbursement in the case of unjustified cancellation or termination.**

9.6. Combined bus/walking tours may only take place in buses with a functioning microphone system and appropriate seating for the **tour guide**. Should this not be the case, the **tour guide** shall have entitlement to refuse the order while retaining his right to remuneration (Section 6.2 shall apply correspondingly).

10. Insurance cover

10.1. Contractually agreed services shall **only include insurance cover** in favour of the **Customer** or booking party **if specifically agreed accordingly**.

10.2. The **Customer** or booking party is strongly advised to take out a travel cancellation insurance policy.

11. Accessibility of local sights and the special regulations relating thereto

11.1. **CTW** has no influence on the admission times of local sights, for which reason the time quoted in **CTW's confirmation of order** applies solely to the start of the tour and does NOT serve as guarantee of admission to a sight at that point.

11.2. Furthermore, **CTW** has no influence on the general accessibility on Sundays and public holidays of museums and public buildings, in particular churches (which might be closed for tours because of, for example, services, special events, etc.).

11.3. Würzburg's castle and garden management have established the following regulation in order to ensure smooth-running tours of the Residenz UNESCO World Heritage site: Groups consisting of less than 30 people may be "topped up" with other individual visitors even if a group has booked its own tour guide. There might be some admission waiting times in peak periods and during the guided tour.

12. Statute of limitation

12.1. Contractual claims on the part of the **Customer/booking party** against the **tour guide** or **CTW** arising from injury to life, limb or health, including contractual claims for compensation, that are based on said parties' negligent breach of duty or a deliberate or negligent breach of obligation on the part of their legal representatives or vicarious agents shall lapse after three years. This shall also apply to compensation claims for other damages that are based upon a grossly negligent breach of duty on the part of the **tour guide** and/or of **CTW** or based on a deliberate or grossly negligent breach of duty by their legal representatives or vicarious agents.

12.2. All other contractual claims shall lapse after one year.

12.3. The period of limitation as per the above provisions shall in each case begin as from the end of the year in which the claim arose and in which the **Customer/booking party** became aware of the circumstances upon which the claim is based and in which the **tour guide** and/or **CTW** as liable parties became aware or, without gross negligence on their part, had to become aware of said circumstances.

12.4. If negotiations are in progress between the **Customer** and the **tour guide** and/or **CTW** in respect of the claims lodged or the circumstances upon which the claim is based, the period of limitation shall be suspended until such time as the **Customer** or the **tour guide** and/or **CTW** refuses to continue with the negotiations. The aforementioned period of limitation of one year shall become effective three months after such suspension at the earliest.

13. Applicable law, place of jurisdiction

13.1. The entire contractual and legal relationship between CTW and the Customer or booking party as well as between the **tour guide** and the Customer is governed exclusively by the law of the Federal Republic of Germany.

13.2 Insofar as complete on-site payment to the **tour guide** is agreed, the **place of performance and the place of jurisdiction shall be the place where the tour is carried out.**

13.2. The Customer or booking party may only file a legal action against the **tour guide** or **CTW** at their general place of jurisdiction.

13.3. Unless the place of jurisdiction for the place of performance is justified, the authoritative place for legal action on the part of the **tour guide** and/or **CTW** against the Customer or booking party shall be the latter's general place of jurisdiction. If the booking party is a merchant within the meaning of the German Commercial Code or a public or private law legal entity, or if the Customer or booking party has no general place of jurisdiction in Germany, the **exclusive place of jurisdiction** for any claims of the **tour guide** or **CRW** shall be their place of residence or their principal place of business.

13.4. The above provisions on applicable law and the place of jurisdiction shall not apply if determined otherwise in favour of the Customer or booking party by EU regulations applicable to the contract with the **tour guide**.

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lawyer, Stuttgart, 2010