Terms of Accommodation and Agency Agreement

Congress-Tourismus Würzburg, proprietary operation of the City of Würzburg and referred to in the following as “CTW” for short, arranges accommodation for guests in lodging establishments, hereinafter referred to collectively as “Hosts”, in the Fränkische Weinland (Franken Wine Country) in accordance with availability. If effectively agreed, the following terms and conditions will form integral content of the accommodation/booking contract coming into being between the Guest and the Host and, supplementarily to the relevant legal provisions, cover the contractual relationship between the Guest and CTW and the agency activity of CTW. For these reasons you are kindly requested to carefully read through these Terms of Accommodation and Agency.

1. Status of CTW, applicability of these terms and conditions
Subject to the calendar date on which an accommodation contract is concluded (pursuant to the provisions of the new statutory travel law which comes into force on 1 July 2018) the following shall apply:

1.1. In relation to accommodation service contracts which are concluded prior to 1 July 2018, the following shall apply:
   a) CTW operates various websites and publishes certain host directories which list hosts and their respective accommodation facilities. Moreover, if and to the extent that CTW brokers accommodation services, it acts as an agent. In no event however, shall CTW act or be deemed to act as a travel package tour operator or principal party to a contractual relationship regarding the provision of accommodation services when accommodation service contracts are concluded by CTW, lastly, CTW shall not be held liable for information provided or specifications made by any hosts as regards prices and services, nor with respect to the provision of services themselves, nor in relation to alleged deficiencies in connection with the provision of services.
   b) CTW’s liability as an agent for accommodation services as well as any liabilities based on statutory law, especially on the basis of compulsory provisions in relation to tele-services and business contracts that are concluded between CTW and the Guest shall remain unaffected.

1.2. In relation to accommodation service contracts which are concluded later than 30 June 2018, the following shall apply:
   a) CTW operates various websites and publishes certain host directories, brochures, flyers and other print media or online colour illustrations, where CTW is clearly indicated as being the editor of such publications.
   b) Moreover, in relation to any accommodation services which are offered together with certain ancillary services (e.g. accommodation and catering), CTW shall act as agent in relation to accommodation service on behalf of such host if the value of the ancillary services provided together with the accommodation service does not represent a substantial part of the total value of services provided by the host and, if these ancillary services do not constitute a material characteristic of such service offered by the host and has also not been advertised as such.
   c) CTW shall act as an agent of combined travel services, if a combination of travel services offered by CTW fulfills the pre-requisites as defined in the statutory provisions of Section 651w of the German Civil Code (BGB).
   d) Notwithstanding CTW’s statutory obligations, CTW may offer combined travel services (especially with respect to due delivery to the Guest of the information forms as provided by statutory law, and due provision of security in relation to customer payments in the event that CTW collects any Guest payment or associated booking payment; such security arrangements shall be as prescribed by law) in relation to accommodation service on behalf of such host if the value of the ancillary services provided together with the accommodation service does not represent a substantial part of the total value of services provided by the host and, if these ancillary services do not constitute a material characteristic of such service offered by the host and has also not been advertised as such.

2. Prices and services
3.1. The prices indicated in the brochure are net prices and include statutory value added tax and all additional expenses unless indicated otherwise with respect to such additional expenses. Additional charges might be made for optional or supplementary services.
3.2. The services to be provided by the Host are defined solely in the booking confirmation in connection with the valid brochure or property description as well as any supplementary agreements specifically concluded with the Guest/Booking Party. The Guest/Booking Party is advised to make any additional agreement in written text.

4. Payment
4.1. The time at which down payments and final payments fall due is based on the corresponding arrangement agreed with the Guest or Booking Party and indicated in the booking confirmation. In the absence of any such arrangement or if the entire price is not fixed including additional costs, services shall fall due at the end of the Guest’s stay and accordingly be paid to the Host.
4.2. In the case of stays of more than one week, the Host may bill and request payment for the days of absence housing, savings, changes or additional services rendered (e.g. catering services not included in the accommodation price, beverages, etc. from the minibar).
4.3. Even if not expressly indicated in the booking confirmation, the Host is not required to agree in the individual case, request a downpayment amounting to 20 percent of the total price.
4.4. Payment in foreign currencies and by collection – only checks is not possible. Payment by credit card will only be possible by arrangement or if agreed upon, which is subject to a commission by the Issuing bank.
4.5. Should the Guest fail to make an agreed downpayment in part or in whole despite having received a reminder from the Host in which an additional deadline has been set, the Host shall – insofar as he himself is ready and able to render the contractual services and to the extent that the Guest has no legal or contractual right of retention against the Host – have entitlement to withdraw from the contract with the Guest and charge the latter a cancellation fee in accordance with Section 5 below.

5. Cancellation and no-show
5.1. In the case of cancellation the Host shall remain entitled to payment of the agreed price of the stay, including the cost of board and any payments due for additional services.
5.2. Within the framework of its normal business activities, the Host, while not being subject to any obligation to undertake any special efforts, is obliged to seek alternative occupation of the booked accommodation, with account being taken of the special character of said accommodation (e.g. nonsmoking room, family room).
5.3. The Host is obligated to deduct from the aforementioned claim the amount earned through alternative use of the room, as well as any expenses not covered by the contract.
5.4. As per the percentage rates prescribed by law for the assessment of non-incurred expenses, The Guest or Booking Party is obligated to pay the Host the following amounts, based in each case on the total price of the accommodation services (including all additional expenses):
   a) For accommodation without board 90%
   b) For accommodation without board 70%
   c) For full board 80%
5.5. The Guest/Booking Party expressly retains the right to substantiate to the Host that the cancellation costs saved by the latter are considerably
higher than the above charges or that alternative use was found for the accommodation services in question. In such case the Guest/Booking Party will only be obligated to pay the lower amount.

5.6. We strongly recommend the conclusion of a travel cancellation insurance policy.

5.7. For booking processing-related reasons the notice of cancellation is to be addressed to the Host and not to CTW and, in the Guest's interests, should be made in written text.

6. Arrival and departure

6.1. The Guest should arrive on the agreed date by 6:00 pm at the latest without any necessity for a special agreement in this respect.

6.2. The Guest is obligated to notify the Host – not CTW – of any delay in arrival no later than the agreed time of arrival. The Guest's failure to give such notification does not relieve the Guest from the obligation to seek other occupants for the accommodation in question.

6.3. The Guest should leave the accommodation at the latest by 12:00 midday on the date of departure agreed and indicated in the booking confirmation, without any special agreement being necessary in this respect. The Host's failure to vacate the accommodation punctually will entitle the Host to demand extra payment. The Host reserves the right to assert further claims for damages in such instance.

7. Guest's obligations, bringing of animals, cancellation by the Host

7.1. The Guest is obligated to use the accommodation and its facilities and all of the Host's facilities for their intended purposes only and with care and in accordance with any rules of usage which might exist, (e.g. in connection with a swimming pool and sauna).

7.2. The Host is obligated to notify the Host without delay of any defects or malfunctions and remediation thereof. Solely notifying CTW will be insufficient, and culpable failure to lodge complaint could result in any claims by the Guest becoming partially or wholly invalid.

7.3. The Guest may only cancel the contract in the event of significant defects or malfunctions. Before doing so, the Guest shall within the framework of the notice of complaint first set the Host a reasonable deadline for remediation unless such remediation is not possible, or is refused by the Host, or if immediate cancellation is materially justified by a special interest of the Guest which is evident to the Host, or if such reasons make a continuation of the stay objectively unreasonable from the Guest's point of view.

7.4. The bringing into and keeping of pets in the accommodation will only be possible if expressly agreed beforehand or provided for in the tender. Within the framework of such agreement the Host is obligated to provide true and accurate information as to type and size. Infringements against this provision can entitle the Host to extraordinary cancellation of the accommodation contract.

8. Liability

8.1. The contractual liability of the Host for non-physical damages is limited to three times the price of the stay, to the extent that damages to the Guest were caused neither wilfully nor by gross negligence on the part of the Host and to the extent that the Host is responsible for damage arising to the Guest solely as a result of a vicarious agent's negligence.

8.2. This provision shall have no bearing on any innkeeper's liability for deposited objects as per Article 701 et seq. of the German Civil Code.

8.3. The Host shall not be liable for any disruption in connection with services clearly provided by third parties to and merely arranged for by the Host for the Guest/Booking Party during the period of lodging (e.g. sports events, theatre visits, exhibitions etc.). This also applies to third-party services already arranged for in conjunction with the booking to the extent that these are expressly identified as such in the tender or booking confirmation.

9. Statutory limitation

9.1. Contractual claims on the part of the Guest/Booking Party against the Host or CTW arising from injury to life, limb or health, including contractual claims for reimbursement based on negligent breach of duty on the part of the Host or CTW or on wilful or negligent breach of duty by their legal representatives or vicarious agents will be subject to a period of limitation of three years. This also applies to claims for reimbursement for other damage arising from grossly negligent breach of duty on the part of the Host or CTW or from wilful or grossly negligent breach of duty by their legal representatives or vicarious agents.

9.2. Any and all other contractual claims will be subject to a period of limitation of one year.

9.3. The period of limitation as per the foregoing provisions shall in each case commence at the end of the year in which the claim was asserted and in which the Guest/Booking Party became aware of circumstances which justify such claim and in which the Host or CTW became aware of their liability or should have become aware thereof had it not been for gross negligence.

9.4. If negotiations are in progress between the tourist and the Host and/or CTW in respect of lodged claims or the circumstances upon which the claim is based, the period of limitation shall be suspended until such time as the Host or the Host and/or CTW refuses to continue with the negotiations. The aforesaid period of limitation of one year shall become effective no earlier than three months after said suspension.

10. Alternative settlement of disputes; Applicable law; Place of jurisdiction

10.1. With respect to the newly introduced legislation regulating the settlement of consumer disputes (Gesetz über Verbraucherstreitbeilegung) CTW advises here that neither CTW nor the Host currently participate in any such voluntary settlement programme. In the event that the participation in such a programme became obligatory in the further course after printing and publishing these terms and conditions, CTW/ the host shall duly inform their Guests accordingly. In relation to all contractual relationships concluded electronically, CTW Guest/ the Host makes reference herewith to the European dispute settlement platform http://ec.europa.eu/consumers/odr/.

10.2. The contractual relationship between the Guest/Booking Party and the Host or CTW shall be governed exclusively by German law. The same shall apply to other legal relationships between the parties.

10.3. The Guest or Booking Party may only take legal action against the Host or CTW at their place of registered domicile.

10.4. As regards legal actions on the part of the Host or CTW against the Guest or Booking Party, the latter's domicile shall be authoritative. The place of jurisdiction shall be the place of registered domicile of the Host as regards legal actions against guests or booking parties who are business persons, legal entities under public or private law or persons who live/whose place of business or usual place of residence is abroad or whose domicile/place of business or usual place of residence is unknown at the time of commencement of the action.

10.5. The aforementioned provisions shall not apply if and to the extent that other mandatory European Union provisions or other international provisions are applicable.

© These terms of contract are protected by copyright.

Noll & Hütten lawyer,
Stuttgart | München, 2004 – 2017