

# Template, Terms and Conditions for Tour Operators of Package Travel in Accordance with the Package Travel Directive

## 1. Area of Application and Definitions

1.1. A tour operator is an entrepreneur who either directly or via another entrepreneur or together with another entrepreneur compiles package tours (as defined in Art. 2 Para. 2 PTD) and contractually arranges or offers them (see Art. 2 Para. 7 PTD). The tour operator provides their services in accordance with the legal regulations, in particular the Package Travel Directive (PTD), and the Package Travel Ordinance (PTO) with the diligence of a prudent contractor.

An entrepreneur is any natural or legal person who meets the requirements for an entrepreneur in accordance with Art. 1 KSchG (Consumer Protection legislation) (see Art. 2 Para. 9 PTD).

Hereinafter, company XXX is defined as tour operator.

1.2. The General Terms and Conditions shall be deemed to have been agreed, if they have been made available before the traveller is bound to a contract by a declaration of contract or if the traveller was able to view their contents. They supplement the package travel contract concluded with the traveller. If the traveller is booking for third parties (fellow travellers), they confirm that they have been authorised by said third parties to procure an offer for them, to agree to the general terms and conditions for them and to conclude a package travel contract for them. The traveller, who is making a booking for themselves or a third party, is thus considered to be the client and thus assumes the obligations of the contract with the tour operator (e.g. payments, withdrawal from the contract, etc.) in accordance with Art. 7 Para. 2 PTD, unless another agreement applies.

1.3. A traveller is any person who intends to conclude a contract subject to the provisions of the Package Travel Directive (e.g. package travel contract) or who is entitled to use travel services on the basis of such a contract.

1.4. The catalogue and the homepage of the tour operator merely serve as advertising material. The package tours and other services listed therein do not constitute offers (cf. 2.2.).

1.5. A package travel contract is the contract for a package tour concluded between the tour operator and the traveller.

1.6. The price of the tour is understood to be the amount to be paid by the traveller as stated in the package travel contract.

1.7. A person with reduced mobility is a person with a physical disability (sensory or motor, permanent or temporary), in accordance with Art. 2 (a) VO 1107/2006 (Rights of disabled persons and persons with reduced mobility), who limits the use of components of the package (e.g. use of a means of transport, accommodation) and as such necessitates the services to be adapted to the special needs of this person.

1.8. Unavoidable and extraordinary or unforeseeable circumstances are defined as incidents/events/occurrences beyond the control of the person referring to them

whereby the consequences of said circumstances could not have been avoided even if all reasonable precautions had been taken (e.g. acts of war, serious issues of security such as terrorism, outbreaks of infectious diseases, natural disasters, weather conditions preventing a safe journey, etc.) (cf. Art. 2 Para. 12 PTD).

- 1.9. The Package Travel Directive and the General Terms and Conditions do not apply to package travel contracts concluded between two entrepreneurs based on a general agreement on the organisation of business trips (e.g. framework contract).

## 2. Role of the Tour Operator

- 2.1. In accordance with the information supplied by the traveller, the tour operator compiles travel proposals for the traveller. These are non-binding and as such do not constitute offers in the sense of Art. 4 PTD. If it is not possible to compile travel proposals on the basis of the information provided by the traveller (no different options, no services etc.), then the tour operator shall notify the traveller of this.

The travel proposals are based on the information of the traveller, which is why incorrect and/or incomplete information supplied by the traveller - in the absence of clarification from the traveller - may form the basis of the travel proposals. When compiling travel proposals, it is possible, for example, to use the price, the expertise of the tour operator/service provider, discounts, the best price principle and other factors, if applicable, as parameters (without any claim to completeness).

- 2.2. If the traveller has a concrete interest in one of the travel proposals submitted to them by the tour operator, the tour operator shall prepare a travel offer on the basis of the travel proposal in accordance with the provisions of Art. 4 PTD, insofar as these are relevant for the trip. The travel offer compiled by the tour operator commits the tour operator. It is possible that the pre-contractual information contained in the travel offer may vary due to price or service changes, provided the tour operator has reserved this right in the travel offer, the tour operator shall inform the traveller clearly, comprehensibly and explicitly of the changes prior to conclusion of the package travel contract and the changes are made by mutual agreement between the traveller and the tour operator (see Art. 5 Para. 1 PTD). *A contract between the tour operator and the traveller is concluded when the travel offer is accepted by the traveller (= declaration of contract by the traveller).*

- 2.3. The tour operator offers the traveller advice and information based on the information provided to the tour operator by the traveller. The tour operator presents the package tour requested by the traveller to the best of their knowledge, taking into account the customary conditions in the country of destination as well as any special features associated with the package tour (e.g. expedition tours). There is no obligation to provide information on generally known circumstances (e.g. topography, climate, flora and fauna of the desired destination etc.), provided, depending on the type of package tour, there are no circumstances which require separate clarification or clarification of the circumstances is not necessary for the provision and the course or performance of the agreed services. In principle, it must be noted that the traveller consciously chooses a different environment and that the quality, facilities, food (seasoning in particular) and hygiene levels are related to the regional standards/criteria customary for the country/place of destination. *In addition, the traveller has the opportunity to obtain more detailed information on the customary local conditions, in particular with regard to the location, place and quality (customary in the country) of the agreed*

*services, from the catalogue or the website of the tour operator.*

2.4. The tour operator shall inform the traveller in accordance with Art. 4 PTD before the traveller is bound to a package travel contract by a declaration of contract:

2.4.1. Of the existence of a package tour by means of a standard information sheet pursuant to Art. 4 Para 1 PTD. *In addition, the standard information sheet for package travel can be referred to - if available in printed or digital form - in the catalogue or on the website of the tour operator.*

2.4.2. Of the information listed in Art. 4 Para. 1 PTD, insofar as it is relevant to the arranged package travel and it is necessary for the execution and provision of services (e.g. in the case of an exclusively beach holiday no references to sightseeing tours as in the case of study trips etc. are necessary, insofar as these are not part of the agreed services). *In addition, this information can be viewed - if available - in the catalogue or on the homepage of the respective tour operator.*

2.4.3. Of whether the package holiday to be arranged is generally suitable for persons with reduced mobility, provided that this information is relevant to the package in question (Art. 4 Para. 1 No.1(h) PTD).

2.4.4. General passport and visa requirements of the country of destination, including approximate time limits for obtaining visas and for completing health care formalities (Art. 4 Para. 1 No. 6 PTD), provided that this information is relevant to the package in question. Upon request, the tour operator will provide information on foreign currency and customs regulations. General information on passport and visa requirements, health care formalities as well as foreign currency and customs regulations for travellers with Austrian citizenship can moreover be obtained by selecting the desired country of destination under <https://www.bmeia.gv.at/reise-aufenthalt/reiseinformation/laender/>. EU citizens can request this information from their relevant representative authorities. It is assumed that a valid passport (which e.g. is not expired, not reported stolen or lost, etc.) is generally required for travel abroad, and the traveller is responsible for its validity. The traveller is responsible for complying with the health care formalities of which they have been notified. The traveller is responsible for obtaining the necessary visa, unless the tour operator has agreed to process the procurement of such a visa.

2.5. The tour operator shall inform the traveller of the identity of the operating airline in accordance with Art. 11 of Regulation 2111/05, provided that the identity is already known at the time the contract is concluded. If the operating airline has not yet been determined when the contract is concluded, the tour operator shall inform the traveller of the airline which is expected to operate the flight. As soon as the operating airline has been determined or if there is a change to the operating airline after the conclusion of contract, the traveller will be informed as soon as possible.

2.6. Special requests by travellers which are akin to customer preferences (e.g. sea view) are fundamentally non-binding and do not result in a legal claim, provided these requests have not been confirmed by the tour operator as a requirement of the traveller in accordance with Art. 6 Para. 2 No. 1 PTD. If a confirmation is issued, a binding service agreement exists.

Should the tour operator accept a customer preference, this merely represents an agreement to forward said requests to the relevant service provider or to clarify their

feasibility and does not constitute a legally binding guarantee as long as it has not been confirmed by the tour operator.

- 2.7. If the traveller does not book directly with the tour operator (e.g. by visiting the branch, requesting information by telephone or e-mail, etc.), but through a travel agent, the provisions of point 2 of these General Terms and Conditions shall apply.

### 3. Responsibilities of the Travel Agent and Locally Booked Services

3.1. *Travel agents are not authorised by the tour operator to make different agreements, to provide information or make assurances which alter the agreed content of the package travel contract, go beyond the scope of the contractually agreed services of the tour operator or contradict the travel offer. Travel catalogues and internet tenders which have not been published by the tour operator are not binding for the tour operator and the tour operator is not obligated to provide said services provided they have not been made the subject of the travel offer or the content of the service obligation of the tour operator by express agreement between the tour operator and the traveller.*

- 3.2. Services booked on site with a third party tour operator or with service providers who are not accountable to the tour operator are not binding for the tour operator and do not fall within its service obligation and are not attributed to the tour operator unless these services have been expressly confirmed/authorised by the tour operator (see also 20.5.).

### 4. Obligation of the Traveller to Provide Information and Cooperation

- 4.1. The traveller is to provide the tour operator - if applicable via a travel agent, if such an agent was used to facilitate the booking - with all personal (e.g. date of birth, citizenship etc.) and factual (e.g. planned carriage/importing of medication, prostheses, animals, etc.) information, which is relevant to the package tour in a timely, complete and truthful manner. The traveller must notify the tour operator of any issues relating to its person or its fellow travellers (e.g. allergies, food intolerance, no travel experience, etc.), and of its and their special needs, in particular with regards to any reduced mobility or health-related issues and other restrictions which may be relevant for the preparation of travel offers or for the execution of a package tour with the to be agreed travel services (e.g. for hiking trips etc.), *if necessary by submitting a complete qualified certificate (e.g. medical certificate).*

4.2. *In the instance of reduced mobility or other limitations or special needs in accordance with item 4.1 (e.g. requirement of special medication, regular medical treatment, etc.), which would possibly affect the execution of the trip, the traveller is advised to consult a doctor prior to booking as to whether the traveller in question is able to travel.*

4.3. *If the mobility of the traveller only becomes reduced in the period between contract conclusion and trip commencement or if other restrictions within the meaning of item 4.1 arise during said period, then the traveller must inform the tour operator of this change immediately - for reasons of proof it is recommended to do so in writing - so that the tour operator can decide whether the traveller can still take part in the package tour without endangering themselves or their fellow travellers or whether*

*they are entitled to exclude the traveller and withdraw from the contract. If the traveller does not fulfil their obligation to provide information completely or in a timely manner and the tour operator declares their withdrawal from the contract, the tour operator is entitled to compensation in accordance with the compensation rate.*

- 4.4. The traveller, who is making a booking for themselves or a third party (fellow travellers), is considered to be the client and assumes the obligations arising from the contract with the tour operator (e.g. payment of the fee; only the client is entitled to withdraw from the contract, etc.) in accordance with Art. 7 Para. 2 PTD (see 1.2), unless another agreement applies.
- 4.5. The traveller is obligated to check all contractual documents (e.g. package travel contract, booking confirmation, vouchers) provided by the tour operator for factual correctness of their details/data and for any deviations (spelling mistakes; e.g. names, date of birth) as well as for incompleteness and, in the event of inaccuracies / deviations / incompleteness, to inform the tour operator immediately for correction - whereby the written form is recommended for reasons of proof. *Any additional costs incurred as a result, provided these additional costs are based on incorrect or inaccurate information provided by the traveller, shall be borne by the traveller, whereby the fee shall be at least* XX.
- 4.6. Should it be impossible to provide the contractually agreed return transport of the traveller due to unavoidable and exceptional circumstances, the tour operator shall bear the costs for the necessary accommodation for a maximum of three nights. This does not apply to travellers with reduced mobility (in accordance with Article 2(a) of Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air) and their co-travellers, pregnant travellers, unaccompanied minors and travellers in need of special medical treatment, provided that the said persons inform the tour operator of their special needs, which did not exist at the time of booking or had not yet to be known to them, 48 hours before the start of the journey *(see 4.3.)*.
- 4.7. In accordance with Art. 11 Para. 2 PTD, the traveller is obligated to immediately and comprehensively report any perceived deviation from the agreed travel services, including the concrete description of the deviation/issue, in acknowledgement of the respective circumstances, so that the tour operator is able to remedy the deviation, insofar as this is possible or feasible, depending on the individual case (e.g. time difference, impossibility of contacting the expedition, existence of an alternative or an exchange/upgrade option, etc.), and the associated costs (e.g. cleaning the replacement room, finding a replacement hotel etc.). *If the traveller is booking through a travel agent and a breach of contract occurs during the business hours of the travel agent, the traveller must notify the travel agent of the violation of contract. The traveller is advised to notify the agent in writing, for reasons of proof in particular. Outside normal business hours, the traveller must immediately notify the tour operator's representative of any violation of contract or, if such a representative does not exist and/or is not contractually owed, directly to the tour operator via the emergency number specified in the package travel contract.* Failure to report a violation of contract shall have an effect on any warranty claims of the traveller if remedial action could have been taken on site and if such reporting could have been reasonably expected. In accordance with Art. 12 Para. 2 PTD, failure to report a deviation can also be considered as contributory negligence in relation to claims for damages (Art. 1304 ABGB (Austrian civil code)). Reporting a deviation does not immediately guarantee services from the tour operator.

- 4.8. The traveller is obligated to pay the price of the tour agreed within the framework of the package travel contract in full and on time in accordance with the terms of payment. In the event that the deposit or balance payment is not made in due time or is incomplete, the tour operator reserves the right, after issuing a reminder and setting a grace period, to withdraw from the contract and claim additional damages, irrespective of the compensation rate due.
- 4.9. In the event of claims for compensation or price reductions and the receipt of payments for compensation or price reductions in accordance with Art. 12 Para. 5 PTD (e.g. compensation in accordance with Art. 7 of the Passenger Rights Ordinance) or in the event of the receipt of other payments and services from service providers or third parties that are to offset the claims for compensation or price reductions of the traveller against the tour operator (e.g. payments by the hotel), the traveller shall inform the travel agent or tour operator of this situation completely and truthfully.
- 4.10. In the event of a breach of contract, the traveller is fundamentally obligated to minimise the damage (§ 1304 ABGB).

## 5. Insurance

- 5.1. When travelling on holiday, it is important to note that valuable objects, important documents etc. should fundamentally not be taken on the trip. In the case of important documents, it is recommended that copies be made and used, provided copies are accepted. It is not possible to exclude the possibility of theft of valuables and therefore the travellers must take responsibility for this risk themselves.
- 5.2. Organising insurance cover (trip cancellation insurance, trip interruption insurance, luggage insurance, travel liability insurance, health insurance for travel abroad, protection against delays, personal protection, etc.), which guarantees sufficient coverage from the date of the package travel contract until the end of the package tour, is recommended. *Additional information on insurance can be found in the tour operator's catalogue.*

## 6. Booking/Conclusion of Contract/Deposit

- 6.1. The package travel contract is concluded between the traveller and the tour operator if they are in agreement on the basic components of the contract (price, service and date) and the traveller accepts the offer of the tour operator. This gives rise to rights and obligations for both the tour operator and the traveller.
- 6.2. *Unless otherwise agreed, the traveller must transfer a deposit of XX% of the price of the tour to the account specified in the package travel contract (or to the account specified by the travel agent), within XX days of receipt of the package travel contract but at the earliest 11 months before the last scheduled day of the package tour.*
- 6.3. *If a contract is concluded less than 20 days prior to the departure date, then the entire travel price must be transferred immediately upon receipt of the package travel contract to the account named therein (or to the account details provided by the travel agent).*
- 6.4. *If the traveller does not meet their payment obligations according to 6.2. or 6.3., the tour operator reserves the right, after issuing a reminder and setting a deadline, to*

*withdraw from the contract and to claim damages in accordance with the compensation rate.*

## 7. Persons with reduced mobility

- 7.1.** Whether a package tour is specifically suitable for persons with reduced mobility must be clarified in each individual case, whereby the type and extent of the reduced mobility, the nature of the package tour (e.g. adventure tour, study trip, city break etc.), the country/place of destination, the means of transport (e.g. bus, plane, ship etc.) and the accommodation (e.g. hotel, alpine hut, tent etc.) must be taken into account. Persons with reduced mobility must therefore ask the tour operator whether the chosen package is suitable for their concrete situation. The specific suitability of a package tour for persons with reduced mobility does not mean that all the services contained in the package travel contract can be used without reservation by the person with reduced mobility (e.g. a hotel complex may have suitable rooms and other areas for persons with reduced mobility. However, this does not mean that the entire facility (e.g. use of the pool etc.) is suitable for persons with reduced mobility). *If this is the case and the person with reduced mobility decides to book the package tour, the tour operator will keep a handicap record. This serves as the basis of the package travel contract which is to be concluded.*
- 7.2. The tour operator may turn a package travel booking by a person with reduced mobility down if the tour operator and/or one of its agents (e.g. hotel, airline, etc.), having carefully assessed the specific requirements and needs of the traveller, comes to the conclusion that the traveller cannot be transported or accommodated safely and in accordance with the safety regulations or if the tour operator and/or one of its agents concludes that the specific package tour is not suitable for the traveller.
- 7.3. The tour operator and/or one of its agents (e.g. airline, hotel etc.) reserves the right to refuse carriage/accommodation to a traveller who has failed to sufficiently inform the tour operator of their reduced mobility and/or special needs in accordance with 4.1. and/or 4.3. of the General Terms and Conditions so that the tour operator and/or agent is able to assess the possibility of safe and organisationally practicable carriage/accommodation.
- 7.4. For reasons of safety, the tour operator reserves the right to stop travellers from participating in the package who, in the opinion of the tour operator and/or one of its agents (e.g. airline, hotel, etc.), are unable to travel or are not suitable for the package due to the itinerary, the destination, etc., or represent a danger to themselves or others during the package tour.

## 8. Package Travel Contract

- 8.1. The traveller shall receive a copy of the contract document or a confirmation of the contract on a permanent data carrier (e.g. paper, email) upon conclusion of a package travel contract or immediately thereafter. If the package travel contract is concluded in the simultaneous presence of the contracting parties, the traveller is entitled to a paper version. In the case of contracts concluded outside business premises in accordance with Art. 3 No. 1 FAGG, the traveller agrees to receive the copy or confirmation of the package travel contract on an alternative permanent data carrier (e.g. e-mail).
- 8.2.** Unless otherwise agreed, the traveller shall be issued with booking receipts, vouchers, tickets and admission passes, information on planned departure times and, if

applicable, scheduled intermediate stops, connections and arrival times *at the last delivery/contact address provided by the traveller* in good time before the start of the package travel. *Should the aforementioned documents include any inaccuracies/deviations/incomplete information in accordance with 4.5, the traveller must contact the travel agent or tour operator (see 4.5).*

## 9. Substitute Persons

9.1. In accordance with Art. 7 PTD, the traveller has the right to transfer the package travel contract to another person who fulfils all contractual requirements and is also suitable for the package tour (criteria may include gender, (non-)pregnancy, physical condition, required/ adequate level of vaccination/ vaccination protection, certain knowledge and skill set, visas, valid entry permits, non-existence of an entry ban, etc.). If the other person does not fulfil all contractual requirements or is not suitable for the package tour, the tour operator may object to the transfer of the contract. *The tour operator must be informed of the transfer of the contract via a permanent data carrier (e.g. paper, e-mail) within a reasonable period of XX days, but at no less than seven days before the start of the trip.* *A minimum handling fee of XXXXXXXXXXXXX is payable for the transfer of the package travel contract, unless additional costs are incurred.* The traveller transferring the package travel contract and the person entering into the contract are jointly liable to the tour operator for the outstanding price of the tour and the minimum handling fee, as well as for any additional costs incurred.

9.2. Many airlines or other carriers or service providers treat changes to the travel date or the name of the traveller as cancellations and calculate them accordingly. If additional costs are incurred, these will be charged to the traveller (in accordance with Art. 7 Para. 2 PTD).

## 10. Price Changes Before Departure

10.1. In the package travel contract, the tour operator reserves the right to make price changes after conclusion of the package travel contract but no less than 20 days before the first day of the package tour. The tour operator shall inform the traveller clearly, comprehensibly and explicitly via a permanent data carrier (e.g. paper, e-mail) of price changes no less than 20 days before the start of the package tour, stating the reasons for the price change. This information shall be sent to the last address provided by the traveller.

10.2. Changes to the price of the tour are permissible, if the following fees change after conclusion of the contract:

- 1) costs of passenger transport resulting from the changes to the cost of fuel or other energy sources;
- 2) the amount of taxes and levies payable on contractually agreed travel services, such as residence fees, landing fees, embarkation or disembarkation fees at ports, corresponding airport charges and fees for services at ports or airports;
- 3) the exchange rates applicable to the package.

Fee changes can result in price increases or price reductions. *With regard to 1) any change to the price of the tour shall correspond with the additional amount as calculated by the service provider for bus, train or flight or rather XX% of the travel price per dollar of the price increase of a barrel of fuel (NY-MEX Index), with regard to 2) any change to the price of the tour shall correspond with the full amount of the additional fees, with regard to 3) any change to the price of the tour shall correspond to the change in exchange rates.*

In the event of price reductions, the amount of the price reduction shall be refunded to the traveller. However, the tour operator can deduct the relevant administrative expenses from this figure. At the traveller's request, the tour operator shall provide proof of said administrative expenses.

- 10.3. In the event of an increase of more than 8% of the travel price (as per Art. 8 PTD), 11.4. shall apply. The traveller reserves the right to accept the increase as an amendment to the contract, to agree to taking part in an alternative trip - if offered - or to withdraw from the contract without being obligated to pay a compensation rate. Insurance premiums which have already been paid cannot be refunded to the traveller.

## **11. Changes to the Service Prior to Commencement of Travel**

- 11.1. The tour operator may make insignificant changes to the provided services, provided they have reserved the right to do so within the contract. The tour operator or the travel agent, provided the package tour has been booked via such an agent, shall inform the traveller clearly, comprehensively and explicitly of the changes via a permanent data carrier (e.g. paper, e-mail) at the address last notified by the traveller.
- 11.2. Insignificant changes are defined as (whereby this is to be judged in each individual case) minor, objectively justified changes which do not significantly change the nature and/or the duration and/or the service content and/or the quality of the booked package travel.
- 11.3. Significant changes, which the tour operator is forced to make, may result in a significant reduction in the quality or value of the travel services, if the changes affect essential features of the travel services and/or influence the package travel and/or travel execution. Whether a change or reduction in the quality or value of travel services is to be defined as significant or not, must be assessed on a case-by-case basis, taking into account the nature, duration, purpose and price of the package tour as well as the intensity, duration and cause of the change and, where appropriate, whether any party can be made responsible for the circumstances that led to the change.
- 11.4. If, in accordance with Art. 9 Para. 2 PTD, the tour operator is moved to make such aforementioned significant changes to the central features of the travel services which define the nature and purpose of the package travel (cf. 4 Para. 1 No. 1 PTD) or if the tour operator is unable to fulfil the requirements of the traveller, which were expressly confirmed by the tour operator, or if the tour operator increases the total price of the package by more than 8% in accordance with the provisions of Art. 8 PTD, the traveller may

- agree to the suggested changes within a reasonable certain period, as defined by the tour operator, or

- agree to participate in an alternative tour, provided this is offered by the tour operator, or
- withdraw from the contract without paying a cancellation fee.

For this reason, the tour operator shall, in the aforementioned cases, inform the traveller at the address last provided by the traveller of the following in a clear, comprehensible and explicit manner on a permanent data carrier (e.g. paper, e-mail):

- changes in the travel services and, where appropriate, their impact on the price of the package
- the reasonable period within which the traveller must inform the tour operator of their decision and the legal effect of failing to notify the operator of said decision within the reasonable period,
- where appropriate, the replacement package tour offered and its price.

The traveller is advised to submit their decision in writing. If the traveller does not submit a decision within said period, this shall be understood as agreement to these changes.

## 12. Itinerary/Changes

12.1. *It is possible that the package tour may deviate from the advertised or contractually agreed route, the stops on the trip may be moved or brought forward and/or the planned sightseeing tours may be cancelled or changed due to environmental and weather influences (e.g. rain, wind, avalanches, mud slides, etc.), natural disasters (e.g. earthquakes, floods, hurricanes, etc.), border closures, government regulations, traffic issues, changes in flight times, terrorist attacks, power failures, opening hours changed at short notice, etc. (without any claim to completeness). In such cases, the tour operator will endeavour to offer equivalent alternatives or, if necessary, to make up for omitted activities elsewhere.*

## 13. Warranty

13.1. If there is a breach of contract because an agreed travel service has not been provided or has not been provided adequately (= in violation of the contract), the tour operator shall remedy the breach of contract providing the traveller or their fellow travellers (e.g. family members) have not themselves prompted said breach and/or are not in violation of their duties to cooperate and/or the remedial action is not impeded by the traveller and/or the remedial action would not be impossible or would not be associated with disproportionate costs. The traveller must give the tour operator a reasonable deadline by which the breach of contract must be remedied, whereby the deadline must be assessed in each individual case, based on the type/purpose/duration of the package tour, the notified breach of contract, the time of notification (e.g. late in the evening etc.), as well as the time required to procure an alternate solution e.g. an object (relocation etc.). *A deadline must be communicated to the representative of the tour operator on site or, if such a representative does not exist and/or is not contractually owed, directly to the tour operator via the emergency number specified in the package travel contract.*

- 13.2. If the traveller fails to comply with their duty to provide information in accordance with item 4.7. or their duty to cooperate (e.g. to view an alternative room offered by the tour operator or to pack their suitcases in order to change rooms etc.) or they set an unreasonably short deadline for the tour operator to remedy the breach of contract or they do not support the tour operator within the scope of what is reasonable in remedying the breach of contract or they improperly refuse the alternative services offered by the tour operator to remedy the breach of contract, the traveller shall bear the adverse legal consequences (see point 4.7.).
- 13.3. If the tour operator does not remedy the breach of contract within a reasonable period of time, the traveller may remedy the situation themselves and demand compensation for the necessary expenses from the tour operator (see Art. 11 Para. 4 PTD). The principle of the duty to minimise damage applies, i.e. the damage incurred (e.g. costs for alternative services) must be kept to a minimum, whereby this minimum is to be based on the duration, value and purpose of the journey. In addition, the breach of contract must be viewed objectively.
- 13.4. If it is not possible to provide a substantial part of the agreed travel services in accordance with the contract, the tour operator shall offer the traveller, at no extra cost, provided this is possible based on the situation and circumstances (on site)(this would be impossible if e.g. only one hotel were available in the booked category), other appropriate arrangements (alternative services) for the continuation of the package tour which, insofar as possible, are of the same or higher quality as the contractually agreed services; the same shall also apply if the traveller is not returned to the place of departure in accordance with the contract. If the other options offered by the tour operator result in a lower standard of package tour than the contractually agreed services (e.g. half board instead of all-inclusive), the tour operator shall grant the traveller an appropriate price reduction. The traveller may only refuse the proposed alternative arrangements if they are not comparable with the services agreed in the package travel contract or if the price reduction granted is not reasonable. If the traveller rejects the alternative arrangement, the traveller must demonstrate that the other options offered by the tour operator are not equivalent or comparable to the contractually agreed services and/or that the price reduction offered is not sufficient.
- 13.5. If the breach of contract is associated with significant consequences relating to the performance of the package tour in accordance with 11.3. and if the tour operator does not remedy said breach of contract within a reasonable period of time as defined by the traveller taking the circumstances and the breach of contract in question into account (cf. 13.1.), the traveller may withdraw from the package travel contract without needing to pay a cancellation fee, provided the continuation of the package tour would not be reasonable for the average traveller, and, if necessary, the traveller may assert warranty claims and claims for damages in accordance with Art 12 PTD. If the traveller withdraws from the package travel contract, they should be aware that this is associated with a certain risk, as both the significance of the consequences of any breach of contract and the feasibility of continuing the tour must be assessed in the subjective individual case (by a judge) and the result of this assessment may differ from the traveller's point of view. If no other alternatives can be offered in accordance with item 13.4. or if the traveller rejects the other alternatives offered in accordance with item 13.4., the traveller is entitled to assert warranty claims and claims for damages in accordance with Art. 12 PTD even without terminating the package travel contract in the event of a breach of contract. If the traveller rejects the alternative arrangement, the traveller must demonstrate that the other options offered by the tour operator are not equivalent or comparable to the contractually agreed services and/or that the price reduction offered is not sufficient. Where passenger transport is included in the package, the tour operator shall, in the cases referred to in this

paragraph, also ensure the immediate return of the traveller by an equivalent transport service at no additional cost to the traveller.

**13.6. If the tour operator does not withdraw from the package tour, despite being unable to provide services due to unavoidable and extraordinary circumstances (see 17.1.) but instead offers replacement services, the additional costs incurred as a result shall be borne at XX% by the traveller.**

#### **14. Withdrawal by the Traveller without Payment of a Compensation Rate**

14.1. The traveller may withdraw from the package travel contract before the start of the package tour - without paying a cancellation fee - in the following cases:

14.1.1. If unavoidable and exceptional circumstances arise at or in the immediate vicinity of the place of destination, whereby said unavoidable and exceptional circumstances are to be assessed on a case-by-case basis taking into account the scope of the contract and the reach of the particular circumstance which entails the risk, which significantly affect the performance of the package tour or the carriage of travellers to the place of destination in accordance with 11.3. If the traveller withdraws from the contract in these cases, they are entitled to full reimbursement of all payments made for the package tour, but not to additional compensation (see Art. 10 Para. 2 PTD).

14.1.2. In the cases referred to in point 11.4.

**The tour operator is to be notified of the traveller's withdrawal - whereby written form is recommended for reasons of proof.**

14.2. The traveller may withdraw from the package travel contract after commencement of the package tour in the cases described in point 13.5 - without being liable for a compensation rate.

#### **15. Withdrawal by the Traveller with Payment of a Cancellation Fee**

15.1. The traveller is entitled at any time to withdraw from the contract against payment of a compensation rate (cancellation fee). **The tour operator is to be notified of the traveller's withdrawal - whereby written form is recommended for reasons of proof.** If the package tour was booked through a travel agent, then the traveller can also notify said agent of the withdrawal. The traveller is recommended to notify the relevant party of the traveller's withdrawal via a permanent data carrier (e.g. paper, email).

15.2. The cancellation fee shall be calculated as a percentage of the price of the tour and shall be based on the price at the time the cancellation is made together with the expected savings in terms of expenses and additional earnings from reusing the travel services. If the cancellation fee is inappropriate, it may be moderated by a court.

15.3. Depending on the type of package tour, the following cancellation fees apply per person:

XX

## **16. No-show**

- 16.1. A no-show applies when the traveller does not leave the country because they do not wish to travel or they do not leave the country due to an action which they are responsible for or due to a random event that happened to them. If it becomes clear that the traveller is no longer able or willing to utilise the remaining travel services, they must pay the following compensation rate: **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

## **17. Withdrawal of the Tour Operator Before the Start of the Trip**

- 17.1. The tour operator may withdraw from the package travel contract before the start of the package tour if they are prevented from fulfilling the contract due to unavoidable and extraordinary circumstances and the traveller receives the notification of the withdrawal without delay at the last delivery/contact address provided by the traveller, prior to the start of the package tour (see Art. 10 Para. 3 (b) PTD).

- 17.2. The tour operator may withdraw from the package travel contract before the start of the package tour if fewer persons than the minimum number of participants specified in the contract have registered for the package tour and the traveller receives the notification of the withdrawal of the tour operator at the last delivery/contact address provided by the traveller, within the period specified in the contract, but no later than:

- a) 20 days before the start of the package tour for trips lasting more than six days,
- b) seven days before the start of the package tour for trips between two and six days,
- c) 48 hours before the start of the package tour for trips lasting less than two days,

(see Art. 10 Para. 3 (a) PTD).

- 17.3. If the tour operator withdraws from the package travel contract in accordance with items 17.1. or 17.2., they will refund the price of the tour to the traveller, but they will not be obligated to pay any additional compensation.

## **18. Withdrawal of the Tour Operator after the Start of the Trip**

- 18.1. The tour operator shall be released from their obligation to fulfil the contract without being obligated to refund the price of the tour if the traveller has prevented the package tour from taking place due to grossly improper behaviour (e.g. alcohol, drugs, non-observance of a smoking ban, disregarding certain clothing regulations e.g. when visiting religious sites or eating food, illegal behaviour, disruptive behaviour towards fellow travellers, non-compliance with the instructions of the tour guide (e.g. regular late arrival etc.), despite receiving a warning, with the result that the itinerary is disrupted or fellow travellers are affected to such an extent that it is possible that the holiday relaxation of third parties or fellow travellers is affected or the purpose of the trip is negated. In such a case the traveller is obliged to compensate the tour operator for the resulting damages.

## **19. General risk to the traveller**

- 19.1. A package tour usually entails a change in the familiar surroundings. The associated general risks to the traveller, such as (without claiming completeness) stress, nausea (e.g. due to climatic changes), fatigue (e.g. due to a humid climate), digestive

problems (e.g. due to unfamiliar spices, food etc.), and/or any risk associated with the trip, for example (without claiming completeness) earache during diving trips, altitude sickness during high-altitude trips, seasickness during cruises and much more, are borne by the traveller and are not attributable to the tour operator.

- 19.2. If, for the above-mentioned reasons, the traveller does not use the services which have been offered to them in accordance with the contract or if they decide to withdraw from the contract for such a reason, they are not entitled to assert warranty claims or claims for compensation for the unused portions of the travel services.

## **20. Liability**

- 20.1. If the tour operator or service providers which are answerable to the tour operator culpably violate the obligations incumbent on the tour operator, in accordance with the contract with the traveller, then the tour operator shall be obligated to compensate the traveller for the resulting damages.

- 20.2. The tour operator is not liable for personal, material and financial damages of the traveller which occur in connection with booked services, provided that they

20.2.1. occur as a result of a general risk to the traveller or a possible general risk associated with the package tour, which are risks to be borne by the traveller (cf. 19.)

20.2.2. can be attributed to the fault of the traveller;

20.2.3. are attributable to a third party who is not involved in the provision of the travel services in accordance with the package travel contract and the breach of contract was neither foreseeable nor avoidable; or

20.2.4. are due to unavoidable and exceptional circumstances.

- 20.3. In the instance of trips associated with particular risks (e.g. expeditions), the tour operator is not liable for consequences which arise as a result of the materialisation of said risks, provided they take place outside the tour operator's area of responsibility. The obligation of the tour operator to carefully prepare the package tour and to carefully select the persons and companies entrusted with the provision of the individual travel services remains unaffected.

- 20.4. The traveller must obey laws and regulations, instructions and orders of the staff on site, as well as rules and restrictions (e.g. bathing restriction, diving restriction etc.). Should the traveller fail to observe any of the above stipulations, the tour operator is not liable for any resulting damages to the person or property of the traveller or damages to the person or property of third parties.

- 20.5. The tour operator shall not be liable for the provision of the service which they have not confirmed or for additional services booked by the traveller themselves on site after commencement of the journey with a third party or a service provider for whom the tour operator is not accountable.

- 20.6. The traveller is advised not to take any objects of special importance with them. Furthermore, it is recommended that luggage is properly stored and insured (cf. 5.1.).

20.7. Insofar as the Montreal Convention on International Carriage by Air 2001, the Athens Protocol 2002 to the Athens Convention on Carriage by Sea 1974 or the Convention on International Carriage by Rail 1980 as amended in 1999 restrict the scope of compensation or the conditions under which a provider of a travel service covered by the package travel contract is liable to pay compensation, these restrictions shall also apply to the tour operator (see Art. 12 Para. 4 PTD).

## **21. Assertion of Claims**

21.1. In order to facilitate the assertion and verification of alleged claims, it is recommended that the traveller obtain written confirmation of non-performance or inadequate performance of services or secure evidence, proof and witness statements.

21.2. Warranty claims can be asserted within 2 years. Claims for damages expire after 3 years.

21.3. In the interest of the traveller, it is advisable to assert claims directly with the tour operator or via the travel agent comprehensively and concretely immediately after returning from the package tour, since longer delays are associated with more difficulties in proving claims.

## **22. Delivery - Electronic Correspondence**

22.1. The delivery/contact address of the traveller is the last address given to the tour operator (e.g. email address). The traveller shall notify the tour operator of changes, immediately. The traveller is advised to notify the operator in writing.

## **23. Providing information to third parties**

23.1. Information as to the names of the travellers and the whereabouts of travellers shall not be disclosed to third parties, even in urgent cases, unless the traveller has explicitly requested the provision of information and the recipient is disclosed at the time of booking. The costs arising from the transmission of urgent messages shall be borne by the traveller. It is therefore recommended that travellers provide their relatives with the exact holiday address.