

# General Standard Terms and Conditions of Trading for Hotel Accommodation Contracts with Kempinski Hotel Bristol Berlin

## Applicability

- 1) The present General Standard Terms and Conditions shall apply to any (leases and) rental use of hotel rooms for lodging purposes as well as to any further services provided by the hotel for the customer.
- 2) Sub-letting or re-letting of the provided rooms for purposes other than lodging require the prior written consent of the hotel.
- 3) The customer's terms and conditions apply only if so agreed in advance in writing.

## Conclusion of contract, contracting parties, contractual liability and limitation period

- 1) The contract comes into being upon the acceptance of the customer's application by the hotel. At its own discretion, the hotel may confirm the room reservation in writing.
- 2) The parties to the contract are the Kempinski Hotel Bristol Berlin (Nordinvestment Hotel-Betriebs und Verwaltungsgesellschaft mbH) which will be referred to as "Hotel" in the following and customer. If a third party placed the order, then that party shall be liable vis-à-vis the hotel for all obligations arising from the hotel accommodation contract as joint and several debtor with the customer.
- 3) The hotel shall be liable for its obligations from this contract. This liability is limited to cases of intent and gross negligence on the part of the hotel in non-typical services.
- 4) Any and all claims by the customer shall be time-barred after six months.
- 5) The above-mentioned limitation of liability and brief limitation period apply to the hotel's benefit even if obligations are violated during actions leading up to the contract and in case of positive violations of contractual obligations.

## Performances, rates, payment, set-off

- 1) The hotel undertakes to keep the rooms reserved by the customer available, and to render the services which have been agreed in advance.
- 2) The customer is obligated to pay the applicable or agreed hotel rates for rooms provided and for other services used. This also applies to the hotel's services and outlays to third parties caused by the customer.
- 3) The agreed rates include relevant and statutory value-added tax. If there is a statutory increase of value-added tax included in the rates the hotel may appropriately adjust the agreed rates without prior consent of the customer. If the period between conclusion and fulfilment of the contract exceeds four months, and if the rate generally charged by the hotel for such services increases, then the hotel may raise the rate agreed by contract to a reasonable extent, but not by more than ten percent.
- 4) Furthermore, the hotel may change rates if the customer later wishes to make alterations in the number of reserved hotel rooms, the services of the hotel, or the length of the stay of customers, and the hotel consents to them.
- 5) Hotel bills bearing no settlement date have to be paid in full within ten days of receipt. At any time, the hotel is entitled to call in accruing amounts owed and to insist upon immediate payment. In case of delayed payment, the hotel may charge interest to the extent of five percent above the basic interest rate of the European Central Bank. The customer and hotel reserve the right to provide evidence of lower or higher damages, respectively.
- 6) The hotel is entitled to insist upon an appropriate advance payment or security deposit upon conclusion of contract or thereafter, observing the legal provisions for package tours. The amount of the advance payment and dates for payment may be agreed in writing in the contract.
- 7) The customer may offset or reduce a claim made by the hotel only against an indisputable and legally binding claim.

## Rescission by customer (cancellation, No-show)

- 1) Rescission of the contract concluded with the hotel by the customer requires the hotel's written consent. If it is not granted on the part of the hotel, then the rate agreed in the contract must be paid even if the customer does not avail himself of contractual services. This does not apply in cases of delayed performance of the hotel or of impossibility of performance for which the hotel is at fault.
- 2) To the extent that the hotel and customer agreed upon in writing a date for rescinding the contract, the customer may rescind the contract up to that date without incurring payment or damage compensation claims by the hotel. The customer's right of rescission expires if he does not exercise his rescission right in writing vis-à-vis the hotel by the agreed date, to the extent there is no delay in performance by the hotel or impossibility of performance for which the hotel is at fault.
- 3) If rooms are not used by the customer, the hotel must apply credit for the income from renting the rooms to other parties and also for saved expenses.
- 4) At its own discretion, the hotel may require flat-rate compensation from the customer for damages incurred. Then the customer is obligated to pay 90 percent of the contractually agreed rate for lodging with or without breakfast, 70 percent for room and half-board, and 60 percent for room and full-board arrangements. The customer is at liberty to prove that no damages were incurred or that the damages incurred by the hotel were lower than the flat-rate amount charged.

## Rescission by hotel

- 1) In the event that a right of rescission within a certain period of time was agreed in writing for the customer, the hotel is entitled for its part to rescind the contract during that period if there are inquiries from other customers concerning the contractually reserved rooms and the customer does not waive his right of rescission when asked by the hotel.
- 2) If an agreed advance payment is not made even after a reasonable period of grace set by the hotel with warning of rejection has expired, then the hotel is likewise entitled to rescind the contract.
- 3) Furthermore, the hotel is entitled to effect an extraordinary rescission of the contract for a materially justifiable cause, for example if force majeure (an act of god) or other circumstances for which the hotel is not responsible make it impossible to fulfil the contract, rooms are reserved with misleading or false information regarding major facts such as the identity of the customer or the purpose, the hotel has justifiable cause to believe that use of the hotel's services and performances might jeopardize the smooth operation of the hotel, its security or public reputation without being attributable to the hotel's sphere of control or organization, there is a violation of clause Applicability (2), see above.
- 4) The hotel has to immediately notify the customer of its right of rescission.
- 5) The customer cannot derive any claim for compensation from justified rescission by the hotel.

## Room availability, delivery and return

- 1) The customer does not acquire the right to be provided specific rooms.
- 2) Reserved rooms are not available before 3.00 p.m. to the customer on the agreed arrival date. The customer does not have the right to earlier availability.
- 3) Rooms must be vacated and made available to the hotel no later than 12.00 noon on the agreed departure date. After that time, the hotel may charge 50 percent of the full accommodation rate (list price) in addition to damages so incurred for the additional use of the room until 6.00 p.m. (after 6.00 p.m. 100 percent). The

customer is at liberty to prove to the hotel that it incurred no or much lesser damages.

## Liability of the hotel

- 1) The hotel assumes liability for the due care and diligence of a prudent merchant. However, its liability is limited to performance defects in non-typical service areas, damages, consequent damages, and faults or defects resulting from intent or gross negligence on the part of the hotel. Should faults or defects of the hotel's services occur, the hotel will endeavour to remedy the situation when the hotel is notified of this or upon the customer's immediate notification of the defect or fault. The customer undertakes to contribute reasonable assistance in remedying the fault and minimizing any possible damages.
- 2) The hotel's liability towards the customer's property brought into the hotel is in accordance with the statutory provisions, i.e. up to one hundred times the room rate, not to exceed EUR 3.000,00, and up to EUR 750,00 for cash and valuables, cash and valuables up to a maximum value of EUR 25.000,00 may be stored in the hotel or room safe. The hotel recommends to make use of this facility. Liability claims expire unless the customer immediately notifies the hotel after learning of the loss, destruction or damage to the hotel. (Civil Code section 703).
- 3) Unlimited liability of the hotel is governed by the statutory provisions.
- 4) Insofar as a parking space is provided to the customer in the hotel car park or a hotel parking lot, this does not constitute a safekeeping agreement, even if a fee is charged. The hotel assumes no liability for loss of or damage to motor vehicles parked or manoeuvred on the hotel's premises or its contents, excepting cases of intent or gross negligence. This also applies to people carrying out jobs for and being employed by the hotel.
- 5) Wake-up calls are carried out with the greatest possible diligence. Damage compensation claims are precluded hereby; exceptions are cases of gross negligence or intent.
- 6) Messages, mail and merchandise deliveries for hotel guests are handled with care. The hotel will deliver, hold and for a certain fee forward such items by request. Damage compensation claims are precluded hereby, excepting cases of gross negligence or intent.

## Final provisions

- 1) Alterations or amendments to the contract, the acceptance of order or these General Standard Terms and Conditions for Hotel Accommodation should be made in writing. Unilateral changes and amendments by the customer are not valid.
- 2) Place of performance and place of payment is the hotel's registered seat.
- 3) The sole court of jurisdiction – including for check and exchange disputes – for commercial transactions is the registered seat of the hotel. In as much as one contracting party fulfils the requirements of the section 38, paragraph 1 of the Code of Civil Procedure and does not have a general court of jurisdiction within the country, the court of jurisdiction is the hotel's registered seat.
- 4) The contract shall be governed by and construed in all respects in accordance with the laws of the Federal Republic of Germany.
- 5) Should individual provisions of these General Terms and Conditions for Hotel Accommodation be or become null and void, the validity of the remaining provisions shall remain unaffected thereby. In this case the contracting parties are obligated to replace a null and void provision by a relevant and effective provision to the benefit of the economic purpose of the parties. The statutory provisions shall be applicable.
- 6) For conferences, functions and other events separate terms and conditions are applicable.