

## TRAVEL CONDITIONS FLORY KERN

Dear guests, the following terms and regulations will become – as far as they have been effectively agreed upon – part of the travel contract between you and Flory Kern, Ski - Berge - Abenteuer, Einzelfirma; Owner Flory Kern, (in the following „FLORY KERN“ abb.). They complement the regulations by law §§ 651a-m BGB (Bürgerliches Gesetzbuch) and the information prescriptions for tour operators according to §§ 4-11 BGB-InfoV (Verordnung über Informations- und Nachweispflichten nach bürgerlichem Recht) and complete these. **Please read the travel conditions carefully prior to booking.**

### 1. Conclusion of the travel contract

**1.1.** By booking a journey with Flory Kern, the customer obligingly offers the conclusion of a travel contract with Flory Kern. The customer is bound to this offer for ten days.

**1.2.** The booking can be effected either verbally, in written, by telefax or by electronical means. Bookings in written or by telefax should always be done using the registration form of Flory Kern.

**1.3.** The contract will be concluded as soon as the confirmation of booking by Flory Kern has arrived with the customer. This confirmation needs no specific form. As soon as the contract has been concluded, Flory Kern will send a travel confirmation to the customer in written. If the booking is effected less than 7 days before the start of the journey, Flory Kern is not obliged to send a travel confirmation.

**1.4.** The customer is liable for all contractual agreements of his fellow travellers, for whom he effects a booking, as for his own if he has assumed these obligations by explicit and separate statement.

### 2. Amendment of services

**2.1.** Amendments of essential travel services agreed upon by contract, that have become necessary after the contract has been concluded and that have not been brought about by Flory Kern against good faith, are only permitted as long as the amendments are not substantial and do not compromise the whole journey.

**2.2.** Warranty claims remain unaffected in case that the amended services are afflicted with defects.

**2.3.** Flory Kern is obliged to inform the customer of the amendment of essential travel services without delay as soon Flory Kern knows the cause of the amendment.

**2.4.** In case of a substantial amendment of an essential travel service the customer has the right to withdraw from the contract or demand the participation in an another journey which has at least the same value as the amended journey, if Flory Kern is able to offer such a journey without extra cost from his travel program. The customer is obliged to claim these rights without delay as soon as he has been informed of the amendment of the journey.

### 3. Payment

**3.1.** After the conclusion of the contract a deposit of 20% of the total price of the journey is due. The final payment is due 4 weeks before the beginning of the journey.

**3.2.** As long as Flory Kern is able to perform the contractual travel services and no right of retention by law or contract is given, the customer has no right to make use of the travel services or be handed over the travel documents, as long as the travel price has not been paid in full.

**3.3.** If the customer does not pay the deposit and / or the final payment within the agreed due-dates, Flory Kern has the right to – after a reminder with a deadline – withdraw from the travel contract and to charge the customer a cancellation fee according to paragraph 5.

### 4. Price increase

**4.1.** Flory Kern reserves the right to increase the travel price, which has been agreed upon in the travel contract, in case of an increase in transport costs or taxes for specific services such as harbour or airport fees or in case of changes of the currency rates, according to the following conditions:

**4.2.** A price increase is only allowed provided that there are more than 4 months between the conclusion of the contract and the beginning of the journey and that the reason for the price increase has not been foreseeable by Flory Kern before or at the time of the conclusion of the contract.

**4.3.** If the transport costs for the journey increase after the conclusion of the contract, Flory Kern has the right to increase the price of the journey according to the following regulations:

**a)** If the increase is based on the number of seats, Flory Kern has the right to demand the increase per seat from the customer.

**b)** In any other case the additional cost per transport means, that has been asked for by the transport company, will be divided by the number of seats. Flory Kern has the right to demand the additional cost per seat from the customer.

**4.4.** If taxes such as harbour or airport fees, that has been agreed upon when concluding the contract, increase, Flory Kern has the right to increase the travel price according to the proportionate price increase per customer.

**4.5.** If the currency rate for the journey changes after the conclusion of the contract, Flory Kern has the right to increase the journey price to the extent to which the journey costs have increased for Flory Kern.

**4.6.** In case of a belated change of the journey price Flory Kern is obliged to inform the customer of the reason for the price increase without delay. Price increases are only permissible until 21 days before the journey. If the price increase amounts to more than 5% of the journey price, the customer has the right to withdraw from the contract without cost or to demand the participation in a similar journey that has at least the same value as the original journey, if Flory Kern is able to provide such a journey from his program without extra cost for the customer. The customer is obliged to claim these rights without delay as soon as he has been informed of the price increase by Flory Kern.

### 5. Withdrawal by the customer before the journey / cancellation fee

**5.1.** The customer has the right to withdraw from the travel contract at any time before the journey. The withdrawal needs to be declared in written to the address given in these travel conditions.

**5.2.** If the customer withdraws from the contract before the journey or does not show up for the journey, Flory Kern loses his claims on payment of the journey price. Instead of the journey price Flory Kern can demand an adequate compensation for the travel preparations that have been undertaken before the withdrawal and the costs that have occurred, depending on the travel price, as far as the withdrawal has not been acted for by Flory Kern and no case of force majeure is on hand.

**5.3. FLORY KERN** is obliged to differentiate this claim for compensation by the proximity of the withdrawal to the beginning of the journey and in a percental proportion of the journey price. When calculating the compensation, expenses that can normally be saved or used otherwise need to be accounted for. The compensation will be charged depending on the date of the withdrawal according to the following regulations:

#### **Packaged tour including scheduled or charter flight**

- until 30 days before the journey 20%
- from the 29th to the 22nd day before the journey 30%
- from the 21st to the 15th day before the journey 40%
- from the 14th to the 7th day before the journey 50%
- from the 6th day before the journey 55%
- when withdrawing on the date of departure or not showing up for the journey 90%

#### **Journey with own transport within Europe**

- until 45 days before the journey 10%
- from the 44th to the 22nd day before the journey 30%
- from the 21st to the 15th day before the journey 50%
- from the 14th to the 7th day before the journey 75%
- from the 7th day before the journey or when not showing up for the journey 80%

#### **Journey with own transport outside of Europe**

- until 60 days before the journey 10%
- from the 59th to the 30th day before the journey 50%
- from the 29th to the 8th day before the journey 75%
- from the 7th day before the journey or when not showing up for the journey 90%

**5.4.** The customer has the right to prove that there has been no loss for Flory Kern at all or that the loss for Flory Kern is less than the flat claim for compensation.

**5.5.** Flory Kern reserves the right to demand a higher compensation instead of the flat compensation mentioned above. In that case Flory Kern is obliged to account for the claimed compensation in detail, taking into account the expenses that could be saved or used otherwise.

**5.6.** Flory Kern strongly recommends the customer to effect an insurance in order to provide for the costs in case of a necessary return transport because of an accident or disease.

**5.7.** The right of the customer, according to the § 651 b BGB, to provide a substitute participant, remains unaffected by the preceding regulations.

### 6. Services that have not been made use of

If the customer does not make use of single travel services that has been offered to him in due form, for reasons that have to be accounted for by the customer himself (e.g. because of early return or for other coercive reasons), the customer has no right to claim back the proportionate travel price from Flory Kern. However, Flory Kern will endeavour to claim back the saved expenses from the service provider. This obligation does not apply if the services were insignificant or if lawful or governmental regulations stand against the compensation.

## 7. Withdrawal by Flory Kern because of not achieving the minimum number of participants

7.1. Flory Kern has the right to withdraw from the travel contract, if the minimum number of participants has not been achieved, according to the following regulations:

a) The minimum number of participants and the latest possible date of the withdrawal by Flory Kern need to be included in the journey description.

b) Flory Kern needs to include the minimum number participants and the latest possible date of the withdrawal by Flory Kern in the confirmation of the booking.

c) Flory Kern is obliged to inform the customer without delay if the journey needs to be called off as soon as it is clear that the journey will not be carried through because the minimum number of participants has not been achieved.

d) A withdrawal from the journey by Flory Kern less than 4 weeks before the journey is not allowed.

e) The customer has the right to demand the participation in another journey which has at least the same value as the journey that has been called off, if Flory Kern is able to provide such a journey from his program without extra cost for the customer. The customer is obliged to claim these rights without delay as soon as he has been informed of the withdrawal by Flory Kern.

7.2. If the journey is not carried through because the minimum number of participants has not been achieved, the customer will be refunded all payments made for this journey without delay.

## 8. Cancellation of the travel contract due to erratic behaviour

8.1. Flory Kern has the right to cancel the travel contract without notice, if the customer disturbs the journey enduringly, irrespective of a warning by Flory Kern or if he offends against the contract in such a way that the immediate cancellation of the contract is legitimate. A cancellation is also legitimate in the case that the participant does not meet the requirements of the journey regarding his / her equipment, physical condition or behaviour when skiing, which have become part of the travel contract, or if he counteracts to objectively eligible directions by the tour guide, the service providers or employees of the agency.

8.2. In case of the cancellation of the contract by Flory Kern, Flory Kern keeps the claim on the travel price but is obliged to refund the expenses that could be saved or used otherwise including the expenses that are refunded by the service providers.

## 9. Obligations of the customer

9.1. The participant is obliged to report any service defects without delay to the tour guide on spot and ask for remedy. Claims of the customer do only not expire in that case that the not reporting of the defect has been neglected through no fault of his / her own.

9.2. Tour guides, agencies and employees of service providers are not authorised by Flory Kern to attest defects or acknowledge claims against Flory Kern.

9.3. If the journey is substantially affected by a defect, the customer has the right to cancel the travel contract. The same applies if taking part in the journey cannot be expected from the customers because of such a defect. The reason for not taking part needs to be recognisable to Flory Kern. The cancellation is only allowed if Flory Kern – or one of his agents who have been mentioned in the travel contract as contact persons (e.g. tour guide, agency) – have not acted to remedy the defect within a time limit set by the participant. There is no need to set a time limit if the remedy is impossible or has been refused by Flory Kern or one of his appointees or if the immediate cancellation is justified by an exceptional interest of the participant.

## 10. Limitation of liability

10.1. The contractual liability of Flory Kern is - for damages that are not bodily injuries - restricted to the threefold travel price:

a) as far as the damage has not been brought about deliberately or grossly negligently

b) as far as Flory Kern is liable for a damage only because of the fault of a service provider.

10.2. Flory Kern is not liable for service defects, personal or material damages in conjunction with services that have only been put over as an agent (e.g. flights, excursions, transport services from and to the agreed starting point and / or ending point), if these services have been explicitly characterised as external services in the journey description and the booking confirmation including the information on who is the actual service provider. It must be clear to the customer that these services are not part of the service package of Flory Kern. Flory Kern is, however, liable

a) for services, which include the transport of the customer from the agreed starting point to the agreed ending point of the journey, any transport in between and the accommodation during the journey,

b) if and insofar as the infringement of responsibilities of Flory Kern regarding advice, information and organisation is the cause for the damage.

## 11. Exclusion of claims and limitation of claims

11.1. Claims resulting from defects in providing the agreed services during the journey need to be enforced by the customer within one month after the designated end of the journey.

11.2. The enforcement can only be effected in written under the address given in these travel conditions.

11.3. After the expiration of the time limit the claims can only still be enforced by the customer if he / she has been prohibited from the timely enforcement through no fault of his / her own.

11.4. Contractual claims of the customer according to §§ 651 c to f BGB, resulting from the violation of life or bodily harm including contractual claims for compensation for pain and suffering that result from a negligent breach of duty by Flory Kern, or that result from a deliberate or negligent breach of duty of one of his lawful appointees or auxiliary persons, are limited to two years. The same applies to claims on compensation of other damages, that are the result of a grossly negligent breach of duty by Flory Kern or that result from a deliberate or grossly negligent breach of duty by one of his lawful appointees or auxiliary persons.

11.5. All other contractual claims are limited to one year, according to § 651 c to f BGB.

11.6. The limitation of claims according to the paragraphs 11.4 and 11.5 starts the day on which the journey should have ended according to the travel contract.

11.7. If there are any pending negotiations between the customer and Flory Kern, regarding the claim or the circumstances leading to the claim, the limitation is suspended until the customer or Flory Kern refuses the continuation of the negotiations. The limitation of the claim comes into effect three months after the end of the suspension at the earliest.

## 12. Information on the identity of the fulfilling airline

12.1. Flory Kern informs the customer according to the „EU regulation for the information of flight customers regarding the identity of the fulfilling airline“ before or together with the booking of the identity of the fulfilling airline(s) regarding all air transport within the booked journey.

12.2. If at the time of booking the fulfilling airline is not yet clear, Flory Kern is obliged to inform the customer of which airline(s) will probably undertake the air transport. As soon as the fulfilling airline(s) is / are clear, Flory Kern will inform the customer without delay.

12.3. In the case that the fulfilling airline, which has been communicated to the customer, changes, Flory Kern will inform the customer of the change without delay and as quick as it is possible with adequate means.

12.4. The „Black List“ (airlines who are not allowed to operate in the air-space of the member states) which has been compiled according to the EU regulation, is published on the website of Flory Kern and can be accessed in the office of Flory Kern.

## 13. Choice of law and jurisdiction

13.1. The travel contract between Flory Kern and the customer underlies solely German law. This applies to the whole legal relationship.

13.2. If, with legal action against Flory Kern abroad regarding the liability of Flory Kern on its merits, not German right is applied, only German law will however be applied on legal consequences, particularly regarding the manner and extent of claims of the customer.

13.3. The customer can only take legal action against Flory Kern at his registered office.

13.4. For legal action of Flory Kern against a customer the residence of the customer is decisive. For legal action against customers, respectively the contractual partner of the travel contract, that are merchants, legal persons by public or private law or who are persons who have their residence or common residence abroad or who's residence or common residence is not clear at the time of taking legal action, the jurisdiction is that of Flory Kern.

13.5. The preceding regulations do not come into effect when and insofar as regulations that are applicable to the travel contract and that are not mandatory, are more favourable for the customer in the EU member state, to which the customer belongs or the according German regulations than the preceding regulations.

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