

## TRAVEL CONDITIONS FLORY KERN SKI BERGE ABENTEUER GMBH

Dear guests, the following terms and conditions will become – as far as they have been effectively agreed upon – part of the travel contract between you and Flory Kern Ski Berge Abenteuer GmbH (including the Mountainbike sector Top Bike Trails), in the following „FLORY KERN“. Unless provided otherwise the provisions §§ 651a-m of the German Civil Code (BGB) and the information provisions for tour operators according to §§ 4-11 of the Regulation on Information Obligations (BGB-InfoV, Verordnung über Informations- und Nachweispflichten nach bürgerlichem Recht) shall apply in addition. **Please read the travel conditions carefully prior to booking.**

### 1. Conclusion of the travel contract

1.1. For all methods of booking applies the following:

a) The base of the offer of FLORY KERN and the booking of the customer is the travel description and the additional information as far as they are available for the customer at the time of booking.

b) Sales offices, trip agencies or other third parties are not entitled by FLORY KERN to make agreements, give information or assurances that change or alter the agreed content of the travel contract or even offer additional travel services that go beyond the travel description and contract of FLORY KERN or that are in contrast to it.

c) Information in hotel leaflets or similar directories, which have not been published by FLORY KERN, are not binding for FLORY KERN, unless they have been explicitly agreed by FLORY KERN and the customer and therefore have become a part of the travel contract.

d) In case the content of the travel confirmation is different to the content of the booking, it is a new travel offer of FLORY KERN. The travel contract will be done on the basis of this new offer, if the customer agrees to it explicitly, arranges either deposit or balance payment or declares to take advantage of the travel services.

e) The customer is liable for all contract duties of co-travellers, for which he arranges the booking, same as for his own as far he did took over such duties by an explicit and individual declaration.

1.2. For the booking, that can be effected either verbally, in written form, by telephone, telefax or via electronic means, applies the following:

a) With the booking the customer offers FLORY KERN the conclusion of the travel contract compulsory. The customer is bounded to the booking for 3 working days.

b) The travel contract is valid as soon as FLORY KERN confirms the booking. This booking confirmation does not have to be in written form, it can also be done by telephone or verbally and is also valid. If the customer books by telephone or verbally, FLORY KERN will send a written confirmation to the customer. But even if the customer does not receive a written confirmation the booking is valid if FLORY KERN confirms the booking explicitly by telephone or verbally.

1.3. For bookings via electronic means following applies for the conclusion of the contract:

a) The procedure of the online booking is explained to the customer on the website of FLORY KERN.

b) The online booking form provides a tool to correct, delete and reset the input of the customer. This possibility is explained on the website.

c) The valid languages to fill out the online booking form are mentioned. Legally binding is exclusively the German language.

d) In case the content of the contract will be saved in the online booking system by FLORY KERN, the customer will be informed about it as well as the possibility to recall it later.

e) With pressing the button “book now!” the customer offers FLORY KERN to accept the booking and the conclusion of a legally binding travel contract. The customer is bounded to this offer for 3 working days starting with the sending of the electronic booking.

f) The customer will be informed about the receipt of his booking by an electronic message immediately.

g) By pressing the button “book now!” and sending the online booking the customer has no demand for a conclusion of the travel contract in accordance with his information. It is up to FLORY KERN to accept the travel contract offer of the customer or not.

h) The travel contract is concluded in the moment the customer receives the booking confirmation by FLORY KERN.

1.4. FLORY KERN explicitly declares that, due to the legal regulations (§§ 321 Abs. (2) Ziff. 4, 312g Abs. 2 Satz 1 Ziff. 9 German Civil Code BGB), for travel contracts according to § 651a BGB (package tour contracts and contracts to which §§ 651A ff. BGB do apply), which are concluded by letter, catalogue, telephone, telefax, email, SMS by smartphone or other ways of telemedia, there is no right of rescission, but only the rights of rescission by law, in particular the right to rescind from the contract according to § 651i BGB (notice also Ziff. 5). A right of rescission does exist however, if the travel contract has been concluded outside of business premises according to § 651a BGB, unless the verbal negotiations, on with the conclusion of the contract is based, have been done to a prior order of the customer; in this case there is also no right of rescission. This also applies if the customer did conclude contracts with FLORY KERN about accommodation services (e.g. hotel rooms) or flight services, in which FLORY KERN is not a mediator but direct contracting party of the customer.

### 2. Payment

2.1. After the conclusion of the contract and providing an insolvency coverage certificate (Sicherungsschein) according to § 651k BGB a deposit of 20% of the total price of the journey is due. The final payment is due 30 days prior to the beginning of the journey, provided that the insolvency coverage certificate has been provided and the trip cannot be cancelled

anymore due to the reasons mentioned in paragraph 8.

2.2. If the customer does not pay the deposit and/or the final payment within the agreed due-dates, although FLORY KERN is able to perform the contractual travel services and no right of retention by law or contract is given, FLORY KERN has the right – after a reminder with a grace period – to rescind the travel contract and to charge the customer a cancellation fee according to paragraph 5.

### 3. Amendment of services

3.1. Changes to essential travel services agreed upon by contract, that have become necessary after the contract has been concluded and that have not been effected by FLORY KERN in bad faith, are only permitted to the extent the amendments are not substantial and do not compromise the whole journey.

3.2. Warranty claims remain unaffected in case the amended services are afflicted with defects.

3.3. FLORY KERN is obliged to inform the customer of the change of essential travel services without undue delay as soon FLORY KERN knows of the cause of the change.

3.4. In case of a substantial change of an essential travel service the customer has the right to rescind the contract or demand the participation in another journey which has at least the same value as the changed journey, if FLORY KERN is able to offer such a journey without extra cost from his travel program. The customer is obliged to assert these rights without undue delay as soon as he has been informed of the change of the journey.

### 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 permitted 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 had not occurred at the time of conclusion of the contract as was not foreseeable by FLORY KERN at the time of the conclusion of the contract.

4.3. If the transport costs (especially costs for kerosene etc.) 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 for means of transport, which have been claimed 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 increase compared to the time of conclusion of the contract, FLORY KERN has the right to increase the travel price according to the proportionate price increase per customer.

4.5. If the exchange rate 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 change of the journey price after conclusion of the contract FLORY KERN is obliged to inform the customer of the reason for the price increase without undue delay. Price increases are only permissible until 21 days (date of receipt of the notice on the change) before the beginning of the journey. If the price increase amounts to more than 5% of the journey price, the customer has the right to rescind 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 undue delay as soon as he has been informed of the price increase by FLORY KERN.

### 5. Rescission by the customer before the beginning of the journey / cancellation fee

5.1. The customer has the right to rescind the travel contract at any time prior to the journey. The rescission should be declared in writing to the address indicated in these travel conditions. If the customer did book the journey through a travel agency, the rescission can also be declared in text form towards him.

5.2. If the customer rescinds the contract before the beginning of 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 rescission and the costs that have occurred, depending on the travel price, to the extent FLORY KERN is not responsible for the rescission and there is no case of force majeure.

**5.3.** The claim for compensation of FLORY KERN is determined on the basis of the time of the rescission, i.e. the proximity of the rescission to the beginning of the journey on a pro rata basis of the journey price and the expenses that can normally be saved or used otherwise have been taken into account when calculating the compensation. The compensation will be calculated based on the date the notice of the rescission is received by FLORY KERN according to the following provisions:

**Packaged tour including scheduled or charter flight**

- up to 30 days before the beginning of the journey 20%
- from the 29<sup>th</sup> to the 22<sup>nd</sup> day before the beginning of the journey 30%
- from the 21<sup>st</sup> to the 15<sup>th</sup> day before the beginning of the journey 40%
- from the 14<sup>th</sup> to the 7<sup>th</sup> day before the beginning of the journey 50%
- as of the 6<sup>th</sup> day before the beginning of the journey 55%
- in case of a rescission on the date of departure or not showing up for the journey 90%

**Journey with own transport within the Alps**

- up to 45 days before the journey 10%
- from the 44<sup>th</sup> to the 22<sup>nd</sup> day before the beginning of the journey 30%
- from the 21<sup>st</sup> to the 15<sup>th</sup> day before the beginning of the journey 50%
- from the 14<sup>th</sup> to the 7<sup>th</sup> day before the beginning of the journey 75%
- as of the 6<sup>th</sup> day before the beginning of the journey or in case of not showing up for the journey 80%

**Journey with own transport outside the Alps**

- up to 60 days before the beginning of the journey 10%
- from the 59<sup>th</sup> to the 30<sup>th</sup> day before the beginning of the journey 50%
- from the 29<sup>th</sup> to the 8<sup>th</sup> day before the beginning of the journey 75%
- from the 7<sup>th</sup> day before the beginning of the journey or in case of not showing up for the journey 90%

**5.4.** The customer has the right to prove that there has been no damage of FLORY KERN at all or that the damage of FLORY KERN is less than the flat rate set out above.

**5.5.** FLORY KERN reserves the right to demand a higher compensation instead of the flat rate set out above. In that case FLORY KERN is obliged to account for the damage in detail, taking into account the expenses that could be saved or used otherwise.

**5.6.** The right of the customer, according to the § 651 b German Civil Code, to provide a substitute participant, remains unaffected by the preceding provisions.

**6. Rebooking / change of travel booking**

**6.1.** After the conclusion of the contract the customer has no demand on changes regarding to the date of travel, the travel destination, the place of departure, the accommodation or means of transport. In case there will be a rebooking explicitly demanded by the customer, FLORY KERN has the right to charge the customer a rebooking fee for each traveller that is affected by the rebooking, taking into account following deadlines: as far as nothing else has been agreed upon prior to the confirmation of the rebooking, the rebooking fee for each affected traveller is € 40 if the confirmation of the rebooking is done latest at the start of the second rescission deadline for the respective journey types (see paragraph 5 above).

**6.2.** A rebooking of the customer, which is demanded after these deadlines, can only be done after a rescission of the travel contract according to the conditions mentioned under paragraph 5.2 to 5.5 and a simultaneous new travel registration/booking (if possible at all). This does not apply to a rebooking that only causes minor costs.

**7. Services that have not been made use of**

If the customer does not make use of single travel services that have been offered to him in due form, due to reasons for which the customer is responsible (e.g. because of an early return or for other coercive reasons), the customer has no claim for a pro rata repayment of the travel price from FLORY KERN. However, FLORY KERN will endeavour to collect the saved expenses from the service provider. This obligation does not apply if the services are insignificant.

**8. Rescission because of not reached the minimum number of participants**

**8.1.** FLORY KERN has the right to rescind the travel contract, if the minimum number of participants has not been reached, according to the following provisions:

- a)** The minimum number of participants and the latest possible date of the rescission by FLORY KERN is set out in the travel description or needs to be indicated - if there are uniform rules for all journeys or specific types of journeys - in a general catalogue note or a general description of the travel services.
- b)** FLORY KERN has to include the minimum number of participants and the latest possible date of the rescission by FLORY KERN in the booking confirmation or has to indicate to the corresponding catalogue note in it.
- c)** FLORY KERN is obliged to inform the customer without undue delay if the journey needs to be cancelled as soon it is clear that the journey will not be carried out because the minimum number of participants has not been reached.
- d)** A rescission from the journey by FLORY KERN less than 30 days prior to the beginning of the journey is not permitted.

**8.2.** 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 cancelled, if FLORY KERN is able to provide such a journey from his program without extra cost for the customer. The customer is obliged to assert

these rights without undue delay as soon as he has been informed of the rescission by FLORY KERN.

**8.3.** If the journey is not carried out because the minimum number of participants has not been reached, the customer will be refunded all payments already made for this journey without undue delay.

**9. Cancellation of the travel contract due to erratic behaviour**

**9.1.** FLORY KERN has the right to terminate the travel contract with immediate effect, if the customer disturbs the journey enduringly, irrespective of a warning by FLORY KERN, or if he is in breach of the contract in such a way that the termination of the contract with immediate effect is legitimate.

**9.2.** In case of the termination 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.

**10. Obligations of the customer**

**10.1.** The obligation to report service defects according to § 651 d Abs. 2 BGB on journeys with FLORY KERN is concretized as following:

- a)** The participant is obliged to report any service defects without undue delay to the tour guide on spot and ask for remedy.
- b)** The customer will be notified about the tour guide on spot including his contact details latest with the remittance of the travel documents.
- c)** If there is no travel guide on spot according to the contractual agreements the customer is obliged to report any service defects directly to FLORY KERN under the address mentioned in these travel conditions.
- d)** Only in case the customer has not reported the defect for reasons for which he is not responsible the claims of the customer shall remain unaffected.

**10.2.** Tour guides, agencies and employees of service providers are not authorised by FLORY KERN to attest defects or acknowledge claims against FLORY KERN.

**10.3.** If the journey is substantially affected by a defect, the customer has the right to terminate the travel contract. The same applies if taking part in the journey is unreasonable for the customer because of such a defect due to important reasons which are transparent for FLORY KERN. The cancellation is only permitted 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 failed to remedy the defect within a reasonable grace period time set by the participant. There is no need for a grace period if the defect cannot be remedied or the remedy 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.

**10.4.** If the baggage is lost, damaged or delivered late on flight journeys the customer needs to give notice of the damage or loss to the airline immediately in situ. Airlines can refuse a refund if the damage or loss notification has not been filled out. The notification has to be refunded within 7 days for baggage damage and within 21 days after receipt if the baggage has been delayed. Furthermore the customer must notify FLORY KERN or his agents according to paragraph 10.1b and c) about the loss, damage or delay of his baggage.

**10.5.** The customer is obliged to inform FLORY KERN in case he does not receive the required travel documents (e.g. flight ticket, hotel voucher) fully or partly within the time period announced by FLORY KERN.

**11. Special regulations with regard to alpine dangers and challenges**

**11.1.** The journeys are lead by an approved mountain and ski guide or similar qualified tour guide. However the journeys require a high degree of personal responsibility of the customer. In this context we particularly refer to the "important indications of journeys with high risks".

**11.2.** The mountain and ski guide or similar qualified tour guide has the right to alter the planned tours according to the technical skills and fitness level of the participants or due to unforeseen circumstances.

**11.3.** To the above mentioned unforeseen circumstances in the context of alpine dangers belong in particular but not exclusively: avalanche danger, extreme weather conditions or returning due to an injured participant.

**12. Limitation of liability**

**12.1.** The contractual liability of FLORY KERN is - for damages that do not result of injuries of the body, soul or health - limited to the threefold travel price:

- a)** To the extent the damage has not been caused by gross negligent or intentional conduct or
- b)** To the extent FLORY KERN is liable for a damage only because of the fault of a service provider. Possible additional demands according to the Montreal agreement or the aviation act are not affected by this limitation of liability.

**12.2.** FLORY KERN is not liable for service defects, personal or material damages in conjunction with services that have only been offered as an agent (e.g. flights, excursions, exhibitions, 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 however is liable 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, and/or if and to the extent the infringement of responsibilities of FLORY KERN regarding advice, information and organisation is the cause for the damage. A possible liability of FLORY KERN due to the violation of mediator duties however remain unaffected of the above regulations.

### 13. Assertion of claims, addressee, forfeiture, information on consumer dispute resolution

**13.1.** The customer has to enforce his demands according to §§ 651 c to f BGB within one month after the ending date of the journey agreed upon in the travel contract. The deadline time period starts with the day that follows on the last contractual day of the journey. In case the last day is a Saturday or Sunday or a state approved general bank holiday at the place of declaration, the next working day takes its place.

**13.2.** The assertion of claims within the time custody/deadline can only be done to FLORY KERN under the below mentioned address. After the expiration of the deadline the customer can only still assert claims, if he has been prevented from the timely assertion due to reasons for which he is not responsible.

**13.3.** The deadline according to paragraph 13.1 also applies for the notification of baggage damages or delays of the baggage delivery in connection with flights according to paragraph 10.3, if warranty claims resulting from §§ 651 c Abs. 3, 651 d, 651 e Abs. 3 and 4 BGB are asserted. Claims of compensation due to baggage damage need to be asserted within 7 days, claims of compensation due to delays of the baggage delivery with 21 days after receipt of the baggage.

### 14. Statute of limitation

**14.1.** The statute of limitation for contractual claims of the customer according to §§ 651 c to f BGB based on death, bodily injuries including contractual claims for compensation for pain and suffering that result from a negligent breach of duty by FLORY KERN, or that result from an intentional or negligent breach of duty of one of his lawful appointees or auxiliary persons, is 2 years. The same applies to claims for compensation of other damages, based on a grossly negligent breach of duty by FLORY KERN or an intentional or grossly negligent breach of duty by one of his lawful appointees or auxiliary persons.

**14.2.** The statute of limitations for all other contractual claims is one year, according to § 651 c to f BGB.

**14.3.** The limitation period of claims according to the paragraphs 14.1 and 14.2 starts the day on which the journey should have ended according to the travel contract. In case the last day is a Saturday or Sunday or a state approved general bank holiday at the place of declaration, the next working day takes its place.

**14.4.** 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 claim is time-barred 3 months after the end of the suspension at the earliest.

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

**15.1.** 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.

**15.2.** If at the time of booking the fulfilling airline is not yet clear, FLORY KERN is obliged to inform the customer 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.

**15.3.** 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 undue delay and as quick as it is possible with adequate means.

**15.4.** 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 reviewed in the office of FLORY KERN. It can also directly viewed at [http://ec.europa.eu/transport/modes/air/safety/air-ban/index\\_de.htm](http://ec.europa.eu/transport/modes/air/safety/air-ban/index_de.htm)

### 16. Passport, visa and health regulations

**16.1.** FLORY KERN informs citizens of the European Union about the passport, visa and health regulations that exist in the state of the journey destination prior to the conclusion of the travel contract. Citizens of non EU-states get this information from their competent consulate. It is assumed that no particularities exist in the person of the customer and/or his co-travellers, such as dual citizenship or statelessness.

**16.2.** The customer is responsible for the procurement and the carrying of the officially required travel documents, possible required vaccinations and the compliance to customs and currency regulations. Disadvantages, which result from ignoring these regulations, e.g. the payment of rescission costs, are due to the customer. This does not apply if FLORY KERN has not informed the customer at all, insufficient or wrong.

**16.3.** FLORY KERN is not liable for the granting of a visa and the receipt of it in due time through the respective diplomatic bureau if the customer has ordered him with the procurement, unless FLORY KERN does violate his

own duties guiltily.

### 17. Choice of law and jurisdiction

**17.1.** FLORY KERN indicates, that FLORY KERN does not participate at the voluntary consumer dispute resolution (“Verbraucherstreitbeilegung”). Provided that the consumer dispute resolution would get mandatory for FLORY KERN after the printing of these travel conditions, FLORY KERN will inform the consumers about it in an appropriate form. For all travel contracts, which have been concluded by electronic means according to paragraph 1.5, FLORY KERN points out the European online consumer dispute resolution platform <http://ec.europa.eu/consumers/odr/>

**17.2.** For customers, that are not citizens of a state of the European Union or that are citizens of Switzerland, the German legal system is exclusively agreed upon for all contractual relationships between the customer and FLORY KERN. Such customers can only carry out any legal actions against FLORY KERN at his place of residence.

**17.3.** For legal actions by FLORY KERN 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 court having jurisdiction over FLORY KERN'S registered office shall have jurisdiction.

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**Tour operator is:**  
**Flory Kern – Ski Berge Abenteuer GmbH**  
**Gartenstr. 16**  
**D – 78136 Schonach**  
**Tel.: +49 (0) 7722 920 751**  
**Fax: +49 (0) 7722 919 826**  
**E-Mail: [info@flory-kern.de](mailto:info@flory-kern.de)**