

# General Terms and Conditions for Hostel Accommodation Contracts

Weißbach & Schwarz GmbH & Co KG, January 2010

## I. Scope of Application

1. These Terms and Conditions govern contracts between the customer and the Weißbach & Schwarz GmbH & Co KG, Johannisstr. 11, 10117 Berlin, hereafter referred to as "Hostel" for the rental use of hostel rooms or beds for lodging purposes, as well as all other goods and services rendered by the Hostel for the customer.
2. The prior written consent of the Hostel is required if rooms provided are to be sublet or rented to other parties or used other than for lodging purposes, whereby § 540, para. 1, sentence 2 German Civil Code is waived insofar as the customer is not a consumer.
3. The customer's general terms and conditions shall apply only if these are previously expressly agreed in writing.

## II. Conclusion of Contract, Contracting Parties, Liability, Statute of Limitations

1. The contract shall come into force upon the Hostel's acceptance of the customer's application. At its discretion, the Hostel may confirm the room reservation in writing.
2. The parties to the contract are the Hostel and the customer. If a third party placed the order on behalf of the customer, then that party shall be liable vis-à-vis the Hostel for all obligations arising from the Hostel accommodation contract as joint and several debtor together with the customer, insofar as the Hostel has a corresponding statement by the third party.
3. Any binding direct booking via agent and booking websites shall only be possible for up to 10 persons and up to 7 nights. Enquiries for larger bookings may only be made direct. The hostel shall not be bound by a confirmation by an agent or booking website. The limitation to 10 persons, 7 nights applies also to the total of interconnected individual bookings. Booking costs incurred by the customer shall not be refundable.
4. If the Hostel has already rejected an enquiry made by a customer, he reserves the right also not to accept a booking by the same customer via an agent or booking website.
5. Any claims against the Hostel shall generally be time-barred one year after the commencement of the general statute of limitations dependent upon knowledge of § 199, para. 1 German Civil Code. Damage claims shall be time-barred after five years, independent of knowledge. The reduction of the statute of limitation periods shall not apply for claims which are based on an intentional or grossly negligent breach of obligation by the Hostel.

## III. Services, Rates, Payment, Set-off

1. The Hostel is obligated to keep the rooms reserved by the customer available and to render the agreed services.
2. The customer is obligated to pay the applicable or agreed Hostel prices for rooms or beds provided and for other services used. Payment shall be done upon arrival the latest. This shall also apply to the Hostel's services and outlays to third parties caused by the customer.
3. The agreed prices include applicable value-added tax as required by law.
4. Moreover, the Hostel may change prices if the customer later wishes to make changes in the number of reserved rooms or beds, the Hostel's services, or the length of guests' stay, and the Hostel consents to such changes.
5. Hostel invoices not showing a due date are payable and due in full within ten days of receipt. The Hostel shall be entitled at any time to make accumulating accounts receivable payable and due and to demand payment without undue delay. With default of payment, the Hostel shall be entitled to demand the respectively applicable statutory default interest in the amount of currently 8 percent or, with legal transactions with a consumer, in the amount of 5 percent above the base interest rate. The Hostel reserves the right to prove greater damage.
6. A room has not been claimed, if the announced guest did not check-in until 6.00 p.m. on the stipulated day of arrival, unless the Hostel has been informed of a later arrival. In such case the Hostel is not longer obligated to keep rooms or beds reserved.
7. The Hostel is entitled to require a reasonable advance payment or security deposit upon conclusion of the contract or thereafter. The amount of the advance payment and payment dates may be agreed in writing in the contract.
8. The customer may only set-off or reduce a claim by the Hostel with a claim which is undisputed or decided with final, res judicata effect.

#### **IV. Repudiation by Customer (Cancellation, Annulment) Failure to Use Hostel Services (No Show)**

1. Cancellation by the customer of the contract concluded with the Hostel requires the Hostel's written consent. If such is not given, then the price agreed in the contract must be paid even if the customer does not avail himself of the contractual services. This shall not apply with the breach of obligation of the Hostel to take into account the rights, objects of legal protection and interests of the customer, if holding to the contract is no longer reasonable or another statutory or contractual cancellation right exists.
2. To the extent the Hostel and customer agreed in writing upon a date for a cost-free cancellation of the contract, the customer may cancel the contract up to that date without incurring payment or damage compensation claims by the Hostel. The customer's right of cancellation shall expire if he does not exercise his cancellation right in writing vis-à-vis the Hostel by the agreed date, insofar as no case pursuant to Nr. 1, sentence 3 supra exists.
3. If rooms are not used by the customer, the Hostel must apply credit for the income from renting the rooms or beds to other parties and also for saved expenses.
4. At its discretion, the Hostel may demand the contractually agreed compensation and to make a flat-rate deduction for saved expenses. In this case, the customer is obligated to pay a cancellation fee as follows:

Cancellation up to 30 days prior to arrival:	free of charge
Cancellation up to 10 days prior to arrival:	50% of the value of contract
Cancellation up to 5 days prior to arrival:	75% of the value of contract
Thereafter and in the case of no show:	90% of the value of contract

The value of contract value shall be the gross rate for boarding and lodging agreed upon in the Accommodation Contract, however without any additional services which were only arranged by third parties. The Hostel may claim against the customer for cancellation / damage claims for additional services booked by the Hostel with third parties on behalf of the customer.

5. The customer is at liberty to show that the claim mentioned above was not created or not created in the amount demanded.
6. In the case of partial cancellations (e.g. reduced number of persons, shorter stay) the cancellation fee shall become due only for the affected part and scope of the contract. However, the Hostel shall be entitled to apply the currently prevailing standard conditions for the reduced service, provided the customer was granted concessions different there from.
7. One-time partial withdrawals of up to 10% of the value of contract shall come under goodwill and will be free of cancellation fees.

#### **V. Repudiation by Hostel**

1. To the extent that a right of cost-free cancellation within a certain period was agreed in writing for the customer, the Hostel is entitled for its part to cancel the contract during that period if there are inquiries from other customers regarding the contractually reserved rooms or beds and the customer does not waive his right of rescission upon inquiry thereof by the Hostel.
2. If an agreed advance payment or an advance payment demanded pursuant to Item III, Nr. 7 supra is not made even after a reasonable grace period set by the Hostel has expired, then the Hostel is likewise entitled to cancel the contract.
3. Moreover, the Hostel is entitled to effect extraordinary cancellation of the contract for a materially justifiable cause, e.g. if force majeure or other circumstances for which the Hostel is not responsible make it impossible to fulfill the contract; rooms are reserved with misleading or false information regarding material facts, such as the identity or age of the customer or the purpose; the Hostel has justified cause to believe that use of the Hostel's services might jeopardize the smooth operation of the Hostel, its security or public reputation, without being attributable to the Hostel's sphere of control or organization; there is a breach of the item I. Nr. 2 supra. Among them are, in particular, however not exclusively, bookings for Stag- or Hen-nights; customers with any kind of animal; persons with racist, anti-Semitic, right-wing extremist or other violent-prone or extremist ideologies; the purpose of using sexual services; persons addicted to narcotics, primed or obviously unfit to plead for other reasons.
4. The customer can derive no right to compensation from justified cancellation by the Hostel.

## **VI. Room Availability, Delivery and Return**

1. The customer does not acquire the right to be provided specific rooms.
2. Reserved rooms are usually available to the customer starting at 2:00 p.m. on the agreed arrival date. The customer does not have the right to earlier availability.
3. The Client shall be obliged to report immediately any noticed damages in the provided room, otherwise he will be under the obligation of proofing that he did not cause the damage.
4. Rooms must be vacated and made available to the Hostel no later than 12:00 noon on the agreed departure date. After that time, on the grounds of the delayed vacating of the room for use exceeding the contractual time, the Hostel may charge 50 percent of the full accommodation rate (list price) 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 show the Hostel that it incurred no or much lesser claim to use damages.
5. The Hostel shall be entitled to charge compensation for damages to the rooms or beds, if its use was contrary to the contract and special cleaning was needed because of unusual or wanton pollution.

## **VII. Liability of the Hostel**

1. The Hostel is liable to exercise the duty of care of an ordinary merchant with the performance of its obligations arising from the contract. Claims of the customer for reimbursement of damages are precluded except for such which result from injury to life, body or health and the Hostel is responsible for the breach of the obligation, other damage which is caused from an intentional or grossly negligent breach of obligation and damage which is caused from an intentional or negligent breach of obligations of the Hostel which are typical for the contract. A breach of obligation of the Hostel is deemed to be the equivalent to a breach of a statutory representative or employee. Should disruptions or defects in the performance of the Hostel occur, the Hostel shall act to remedy such upon knowledge thereof or upon objection without undue delay by the customer. The customer shall be obliged to undertake actions reasonable for him to eliminate the disruption and to keep any possible damage at a minimum. The customer can derive no right to compensation or reduced payment from such disruptions.
2. The customer is aware that a specialty of the accommodation facility of the Hostel is among other things the letting of shared rooms, where beds are separately sold to customers. Customers in shared rooms accept that eventually other guests unknown to the customer himself have access to the room. If a customer has not booked all beds in a shared room, it is to be expected that other customers might reserve and use the remaining beds.
3. The Hostel offers a Hostel safe for safekeeping of valuables and has placed sufficient lockers for other objects in each shared room. The Hostel recommends that guests utilize these possibilities.
4. If the deposited valuables are kept safe by the Hostel in the Hostel safe and other objects are locked in the locker, the Hostel is liable to the customer in accordance with the statutory provisions, i.e., up to one hundred times the room rate, not to exceed € 3,500 and up to € 800 for cash, securities and valuables.
5. Liability claims expire unless the customer notifies the Hostel immediately after gaining knowledge of the loss, destruction, or damage (§ 703 German Civil Code). With regard to more extensive liability of the Hostel, Nr. 1, sentences 2 to 4 supra shall apply respectively.
6. The Hostel assumes no liability for loss of or damage to bicycles, bikes, mopeds and motor vehicles parked or manoeuvred on the Hostel's property or in the garage, nor the contents thereof, excepting cases of intent or gross negligence. Nr. 1, sentences 2 to 4 supra shall apply respectively.
7. Wake-up calls are not carried out by the Hostel. Messages, mail, and merchandise deliveries for guests are handled with care. The Hostel will deliver, hold, and for a fee forward such items (on request). The customer can derive no right to claim for damages from not delivered messages or damages to content.

## VIII. Data Protection, Handling of Personal Data

1. Personal data (e.g. name, address, banking details, phone number) is to be kept within statutory periods as part of our business correspondence for 6 years and invoices for 10 years, respectively. This also applies to e-mails and data base entries.
2. They are archived in regular intervals in order to make sure that the storage obligations are fulfilled, however that the number of persons having access to these data is kept as small as possible.
3. For statistics data is sent to the Statistisches Bundesamt (Federal Statistical Office) on a monthly basis, which is required by law. That is the number of persons, the total nights stayed and the country of the customers' home address.
4. In no event will such data be misused or even passed on to third parties.

## IX. Protection of Privacy

1. When booking a bed in a shared room guests share the room with third persons unknown to them. Alternatively customers can book a private room. Customers are obliged to consider this before making a booking.
2. During occupancy the staff enters the rooms daily between 11a.m. and 4p.m. in order to remove waste and, if possible, to sweep and wipe the floor. Customers who dislike this service are asked to notify the Hostel in time.
3. The foyer and the floors are partly under video surveillance in order to prevent theft. The records are deleted after a fortnight.

## X. Final Provisions

1. Amendments and supplements to the contract, the acceptance of applications, or these General Terms and Conditions for Hostel Accommodation should be made in writing. Unilateral amendments and supplements by the customer are not valid.
2. Place of performance and payment is the location of the Hostel's registered office - Berlin.
3. In the event of dispute, including disputes for checks and bills of exchange, the courts at the location of the Hostel's registered office shall have exclusive jurisdiction for commercial transactions. Insofar as a contracting party fulfils the requirements of § 38, para. 2 of the German Code of Civil Procedure and does not have a general venue within the country, the courts at the location of the Hostel's registered office shall have jurisdiction.
4. The contract is governed by and shall be construed in accordance with the laws of the Federal Republic of Germany. The application of the UN Convention on the International Sale of Goods and the conflict of laws are precluded.
5. Should individual provisions of these General Terms and Conditions for Hostel Accommodation be or become invalid or void, the validity of the remaining provisions shall remain unaffected thereby. The statutory provisions shall also be applicable.

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