

## GENERAL TERMS AND CONDITIONS FOR GUIDED TOURS AND AGENCY SERVICE

Dear guests of the city of Nuremberg,

The following contractual terms regulate on the one hand the legal relationship between the **Congress- und Tourismus-Zentrale Nürnberg - hereinafter abbreviated "CTZ"** - and you - hereinafter referred to as **"the guest"** - or the contracting agency for the guided tour with regard to **agency activities of the CTZ**, and on the other hand the **legal relationship between you and the tour guide arranged by the CTZ**. To the extent that these terms are legally effectively included, they shall become part of the content of the **service agreement** formed in case of a booking between you or the contracting agency and the tour guide. **Therefore, please read through these general terms and conditions carefully before booking.**

### 1. Position of the CTZ and the tour guide; applicable legal provisions

1.1. The tour guide renders the tendered contractual services as a direct contractual partner of the guest or the contracting agency as an independent service provider. The **CTZ is exclusively a service agent** in the agreement between the guest or the contracting agency for the tour and the tour guide performing the service.

1.2. The **CTZ is thus not liable** for services, defects in performance, personal injury or damage to property in conjunction with the guided tour. This does not apply if the guided tour is a contractually agreed service of a package tour or another offer, in which the **CTZ** is the direct contractual partner of the guest or the contracting agency. A possible liability of the **CTZ** arising from the agency service relationship remains unaffected by this.

1.3 The agreements made on the legal relationship **between the tour guide and the guest** or the contracting agency for the tour apply, first and foremost, to those made with the tour guide or the **CTZ** as his/her representative, supplemented by these agency service and contractual terms, alternatively the legal regulations on the **service contract §§ 611 ff. BGB (German Civil Code)**. The agreements made on the legal relationships with the **CTZ** apply first and foremost to those made with the **CTZ**, thereafter the provisions on the agency activities of the CTZ in the present contractual terms and alternatively the legal regulations of the § 675 BGB on the remuneration for the management of business.

1.4 Unless otherwise specified in compulsory international or European legal regulations in favor of the guest or the contracting agency applicable to the contractual relationship with the tour guide or the agency activities of the **CTZ**, **exclusively German law is applicable** to the legal and contractual relationship in its entirety with the tour guide and the **CTZ**.

### 2. Conclusion of contract, Position of a group contracting agency

2.1. The following applies for **all hereinafter listed booking channels**:

By booking – be it verbally, in writing, by telephone, by fax, by email or by Internet– the guest or the contracting agency offers the binding conclusion of a service contract on the basis of the service specifications for the respective tour and these contractual terms to the respective tour guide, who is represented by the CTZ as a service agent.

2.2. If the booking takes place through a third party, described in these terms as a "contracting agency", that is, an institution or a company (private group, adult education center, school class, association, tour operator, incentive or event agent, travel agency), then this third party is the **sole contracting agency and contractual partner** of the **CTZ** in terms of the agency contract or the tour guide in terms of the service agreement, as long as he/she does not expressly act as the

legal representative of the later participants. **The contracting agency in this case is responsible for the full payment liability in regard to the agreed payment or other contractual claims for payment.**

**2.3.** The CTZ points out that according to the legal provisions (§ 312g para. 2 sent. 1 item. 9 BGB) for contracts for guided tours as agreements on services in conjunction with leisure activities, which were concluded by distance selling (letters, catalogs, telephone calls, teletypes, emails, messages sent via short message service (SMS)), no revocation right exists but solely the legal regulations on the non-use of services (§ 611 ff., 615 BGB) are application (see also item 5. and 6. of these contract terms. A revocation right exists, however, if the agreement is not concluded by distance selling, but rather outside the business premises, unless the verbal negotiations the agreement is based on are carried out by a preceding order by the consumer; in the last mentioned case a revocation right also does not exist.

**2.4.** For **booking - be it verbally, in writing, by telephone, by fax, by email** – the following applies:

a) By **booking** the guest or the contracting agency of the respective tour guide, who is represented by the CTZ as a legal representative, offers the **conclusion of a service contract** on the basis of the service specifications for the respective tour and these **binding** contractual terms to the respective tour guide and at the same time give the agency agreement to that effect to the **CTZ**,

b) The service contract for the guided tour is effected by the **booking confirmation**, which the **CTZ** makes as the representative of the tour guide. **It requires no specific form.** As a rule, however, the **CTZ** will issue the guest or the contracting agency a **copy of the booking confirmation in text form**, except for bookings at very short notice. For binding bookings by telephone the legal force of the agreement is **independent** of the receipt of the copy of the booking confirmation in text form and a possible agreed advance payment.

**2.5.** For bookings which are effected **without individual communication via an online booking procedure (contract in electronic business transactions)**, the following applies:

a) By clicking on the button **“pay for booking”** the guest offers the tour guide the binding conclusion of the service contract for the tour and at the same time places an order for the agency agreement with the CTZ. Electronic confirmation is given immediately to the guest after receipt of the booking.

b) The transmission of the offer to enter into a contract by clicking on the button **“pay for booking”** **constitutes no claim by the guest or the contracting agency to the conclusion of a service contract with the tour guide according to its booking data.** The tour guide or the CTZ as his/her representative are in fact free in their decision to accept or not accept the offer of a contract by the guest or the contracting agency.

c) The CTZ assumes **no guarantee** and **no procurement risk** with the acceptance of the agency agreement to the effect that in fact an agreement corresponding to a booking of the guest or the contracting agency can be arranged with a tour guide.

d) The agreement is effected by the **receipt of the booking confirmation** by the guest or the contracting agency, which the CTZ performs as the agent and representative of the tour guide. The booking confirmation requires no specific form.

e) The booking confirmation takes place either immediately after performing the booking of the guest or the contracting agency by clicking on the button **“pay for booking”** **by corresponding display on the screen (booking in real time)** or – after corresponding electronic confirmation of receipt of the booking by the guest or the contracting agency – after posting the booking in the stated or agreed form in writing, per email or per fax.

f) In the case of an immediate booking confirmation in real time on the screen the customer is offered the possibility of storing and printing the booking confirmation. The binding force of the service contract with the tour guide or the agency agreement at the CTZ is, however, not dependent upon the guest or the contracting agency using the possibilities of storing or printing it.

**g)** As a rule the CTZ will send the guest or the contracting agency, in addition to the booking confirmation displayed on the screen, an additional copy of the booking confirmation per email, email attachment, post or fax. The receipt of such an additional copy of the booking confirmation is, however, at the same time not the requirement for the legal force of the service contract with the tour guide.

### **3. Services, substitution proviso; Diverging agreements;**

#### **Amendment of essential services;**

#### **Duration of tours; Weather conditions**

**3.1.** The service owed by the tour guide consists of giving the guided tour according to the service specifications and the additional agreements.

**3.2. Unless otherwise expressly agreed,** the guided tour **does not have to be given by a specific tour guide.** In fact the choice of the respective tour guide, subject to the required qualification, is incumbent upon the CTZ. Even in the case of the designation of or express agreement on a specific person or tour guide, **in case of a compelling reason** for the inability to attend (in particular owing to illness), the right is reserved **to substitute** the tour guide with another suitable and qualified tour guide.

**3.3.** The scope of the services and warranties owed is stated in the service specifications and the additional agreements. Information and warranties by third parties (in particular travel agencies, accommodation providers, transport companies, restaurants, museums or other sightseeing sites) on the scope of the contractual services that are at variance with the service specifications or the agreements made with the **CTZ** and/or the tour guide are not binding for the **CTZ** and the tour guide.

**3.4.** Amendments or supplements to the contractually tendered services require an express agreement with the CTZ or the tour guide her-/himself, which is strongly recommended in text form for reasons of proof.

**3.5.** Amendments of essential services diverging from the agreed content of the contract that became necessary after the conclusion of the contract (in particular also amendments on the time structure of the tour) and that were not brought about by the tour guide in bad faith **are permissible**, as long as the amendments are not considerable and the overall organization of the tour is not impaired. Possible warranty claims by the guest or the contracting agency in the case of such amendments of essential services remain unaffected.

**3.6 Information on the duration of tours is only approximate.**

**3.7.** For city tours exclusively on foot, the maximum number of participants is 25 persons per tour guide. This also holds for combined bus/walking tours.

**3.8.** The following holds for weather conditions and their effects on agreed tours:

**a)** To the extent nothing else has been agreed in the individual case, the **agreed tours take place in all weathers.**

**b)** Reasons of weather thus do not entitle the guest or the contracting agency to a cancellation or termination at no cost in regard to the contract with the tour guide. This does not apply only if owing to the weather conditions the body, health or property of the guest or the participant of the contracting agency will be so considerably impaired that giving the tour is objectively intolerable for the guest or the contracting agency and his participants.

**c)** If such conditions are present at the start of the tour or rare to be objectively expected before the start of the agreed point in time of the tour both the guest or the contracting agency and the tour guide or the CTZ as his/her representative reserve the right to terminate the contract for the guided tour with or without notice.

d) In the case of such a termination by the tour guide or the CTZ as his/her representative no claims by the guest or the contracting agency to a refund of costs, in particular travel and accommodation costs, unless in this regard contractual or legal claims by the guest or the contracting agency for damages or reimbursement of expenses are justified.

#### 4. Prices and Payment

4.1. The agreed prices include the giving of the guided tour and additionally tendered or agreed services.

4.2. **Entrance fees, costs of meals as well as transportation costs with public and private transportation, city maps, brochures, museum guides, costs of tours** within the context of the sights visited by the guided tours are **only then** included in the agreed price, if they have been **expressly listed or additionally agreed** in the services of the guided tour.

4.3. Unless otherwise agreed in regard to an advance payment, the agreed fee is **due in cash after completion of the guided tour**. Checks or credit cards will not be accepted. **Payment by (warranted) vouchers** is only possible if they are **issued by the CTZ** and are valid for the respective guided tour. Vouchers issued by third parties are **only valid with an express agreement to that effect with the CTZ**.

4.4. The CTZ as a collection agent for the tour guide can demand after conclusion of the contract an advance payment amounting to 20% of the total price of the tour as well as the payment of the balance or – if waiving an advance payment – the entire payment 4 weeks before the start of the tour to the extent this is expressly denoted in the booking confirmation issued to the guest or the contracting agency.

4.5. If the tour guide is prepared to render the contractual services and is in a position to do this and no legal or contractual set-off or retention right on the part of the guest or the contracting agency exists towards the tour guide or the **CTZ**, to the extent that agreed payments, despite a reminder with a suitable deadline are not paid within the agreed deadline date, the tour guide or the **CTZ** as his/her representative are entitled to withdraw from the service contract for the guided tour or the agency contract and to charge the guest or the contracting agency with the cancellation costs according to item 7 of these terms.

#### 5. Nonuse of services

5.1. If the guest or the contracting agency does not use all or some of the agreed services without the tour guide or the CTZ being responsible for this, **in particular through non-arrival or no-show without termination of the contract**, although the tour guide was prepared to render the services and was in a position to do so, **no claim to refunds for payments already made exists**.

5.2. The **legal regulation (§ 615 pp. 1 and 2 BGB (German Civil Code))** applies as follows for the agreed fee:

a) The agreed fee **must be paid**, without claim to a new guided tour.

b) However, the tour guide must credit saved expenses as well as a fee that he obtains by use elsewhere of the agreed services or fails to obtain with malice.

#### 6. Notice of termination and cancellation by the guest or the contracting agency

6.1. The guest or the contracting agency can terminate the contract with the tour guide after conclusion of the contract **up to three working days (Mon.-Fri.) before the agreed date at no cost**. The termination requires no special form. Notice of termination in text form is however

**strongly recommended. The notice of termination is possible by telephone, fax or email during the office hours of the CTZ office (Tel. 0911 / 2336-123, Fax 0911 / 2336-166; Monday to Friday all day from 8 am to 4.30 pm.**

**6.2.** In case of **notice of termination by the guest or the contracting agency, taking place from two working days (Mon. – Fri.) up to the day the tour starts**, payment of the full agreed fee is due. **The regulation in item 5.2. applies accordingly.**

**6.3.** For the above listed deadlines the **receipt of the termination notice by the guest or the contracting agency at the CTZ during the office hours specified in item 6.1 is decisive.** Termination notices are to be directed **exclusively** to the **CTZ** as the representative of the tour guide.

**6.4.** Owing to the above termination regulations legal or contractual termination rights of the guest of the contracting agency in case of defects of service by the tour guide or the agency services of the CTZ as well as other legal warranty claims remain unaffected.

## **7. Liability of the tour guide and the CTZ; Insurance**

**7.1.** For the liability of the CTZ refer to item 1.2 of these terms.

**7.2.** A **liability of the tour guide** for damage that does not result from injury to life, body or health of the guest or the contracting agency **is excluded**, as long as the damage was not caused deliberately or through gross negligence by the tour guide.

**7.3.** **The tour guide is not liable** for services, measures or omissions by food establishments, facilities, sightseeing agencies or other offers visited in the context of a guided tour, unless culpable breach of duty by the tour guide was responsible or concurrently responsible for causing the damage.

**7.4.** The agreed contractual services contain insurance for the benefit of the guest or the contracting agency **only if this is expressly agreed. It is strongly recommended that the guest or contracting agency take out travel cancellation insurance.**

## **8. Tour times, obligations of the guests or the contracting agency**

**8.1.** The guest or the contracting agency must **provide a cell or mobile phone number**, when booking, or in good time before the agreed date of the tour, under which contact can be made with him/her in the case of extraordinary circumstances. As a rule the **CTZ** will also provide the guest or a designated person with a corresponding cell or **mobile phone number of the tour guide giving the tour.**

**8.2.** **Agreed tour times must be punctually adhered to.** If the guest is late, he/she is obliged to inform the tour guide of this **at the latest by the time of the agreed start of the tour** and to specify the estimated time of late arrival. The tour guide can **refuse a later start to the tour**, if the delay is objectively impossible or unreasonable, in particular if subsequent tours or other compelling business or private appointments of the tour guide cannot be adhered to. **Delays of more than 30 minutes entitle the tour guide generally to refuse the tour. In this case the regulation in item 5 of these terms applies to the claim for remuneration by the tour guide.**

**8.3.** The guest or the authorized representative of the group contracting agency is obliged to **immediately notify the tour guide of possible defects in the tour and agreed services and to request relief.** Possible claims arising from defective or incomplete services by the tour guide are dropped only if this notification of defects is culpably omitted.

**8.4.** The guest or the contracting agency are only entitled to **discontinuance or termination of the tour after the tour has started**, if the performance of the tour guide is considerably defective and, despite a notification of defects to that effect, these defects are not remedied. **In case of an unjustified discontinuance or termination, no claim to reimbursement exists.** Warranty claims of the guest or the contracting agency in the case of a defective performance by the guided tour remain unaffected by this.

**8.5.** Bus tours can only be conducted in buses with a functioning microphone and a courier seat. Otherwise the tour guide is entitled to refuse the tour, but continues to be entitled to his/her fee (item 5.2 applies accordingly).

## **9. Settlement of consumer disputes; Place of jurisdiction**

**9.1.** The **CTZ** points out that in regard to the law on the settlement of consumer disputes that when these guided tour terms went to press essential provisions of the law were not yet in force. The **CTZ** itself and the tour guides do not take part in a voluntary settlement of a consumer disputes, unless otherwise stated in the print media or in an internet presence of the **CTZ**. If the participation in an institution for settlement of consumer disputes after these Agency Services and Contractual Terms went to press would become mandatory for the **CTZ** or the tour guides, the **CTZ** or the tour guide will inform the guest about this in a suitable form. The **CTZ** makes reference for all contracts concluded in electronic legal relations to the European Online Settlement of Consumer Disputes Platform <http://ec.europa.eu/consumers/odr/>.

**9.2.** As long as full **payment on the spot** to the tour guide or the **CTZ** is agreed, the **place of performance and jurisdiction is the place where the guided tour took place.**

**9.3.** The guest or the contracting agency may file a complaint against the tour guide or the **CTZ only at their place of general jurisdiction.**

**9.4.** For claims of the tour guide or the **CTZ** against the guest or the contracting agency the place of general jurisdiction of the guest or the contracting agency is decisive. If the contracting agency is a businessman or a legal entity under public or private law or if the guest or the contracting agency has no place of general jurisdiction in Germany, then the **exclusive place of jurisdiction** for complaints by the tour guide or the **CTZ** is their place of residence or head office.

**About our privacy policy:** We process your personal data only within the scope of legal regulations. You can find more details about our privacy policy and your rights at <https://tourismus.nuernberg.de/en/service/data-protection>

© Copyright protected; **Noll & Hütten Attorneys; Stuttgart | München 2006-2020**

Service agent for guided tours is:

Congress- und Tourismus-Zentrale Nürnberg

Verkehrsverein Nürnberg e.V.

Chairman: Lord Mayor Marcus König

Frauentorgraben 3/IV, D-90443 Nürnberg

Tel: +49 911 2336-0

Fax: +49 911 2336-166

[tourismus@nuernberg.de](mailto:tourismus@nuernberg.de)

Register of Associations no. 11 at the Amtsgericht Nürnberg (District Court of Nuremberg)