

## Umfulana General Terms and Conditions

Last updated: September 2005

Supplemental to Section 651a et seq. of the German Civil Code (BGB), the following General Terms and Conditions are agreed between UMFULANA Individuelles Reisen GmbH, Wipperfürther Str. 376, 51515 Kürten, Germany (hereinafter referred to as Umfulana) and the Customer:

### § 1 Conclusion of a Travel Contract

1. Tour requests are submitted either in writing or orally by the Customer. A request becomes binding upon Umfulana's receipt of written confirmation of the tour dates and price. If the tour is booked for more than one person, the Customer shall be liable for such persons, including for the fulfilment of their contractual obligations, provided the Customer has issued a formal obligation statement.

2. The Travel Contract shall only take effect upon the Customer's receipt of the written booking confirmation. If travel services are expressly provided by Umfulana on behalf of third parties (flights, rental cars, transportation, hotels, excursions, etc.) the contractual terms and conditions of the particular service provider shall apply.

### § 2 Services

1. The obligations entered into by Umfulana shall be based solely on the details contained in the booking confirmation. If, in exceptional cases, the details in the booking confirmation differ from the details in the tour request, Umfulana shall be bound by the new offer for a period of 10 calendar days. The travel contract shall take effect if a written objection is not submitted by the Customer within 10 days.

2. Service providers (such as hotels and airlines) and travel agencies are not authorized by Umfulana to issue guarantees or make agreements that extend beyond or conflict with the tour description or booking confirmation provided by Umfulana or change the confirmed contents of the travel contract. Umfulana shall not be liable for any claims made by the Customer as a result of such guarantees or agreements.

### § 3 Down Payments and Final Payments

1. Upon conclusion of the contract Umfulana shall provide the Customer with a booking confirmation and a Certificate of Security issued by Reiseagentur, the agent for mandatory insolvency insurance for tour operators. A down payment of 20% of the tour price shall become due at that time. The down payment shall be credited towards the total price of the tour.

2. Payment of the full tour price (less the down payment) shall be rendered at least six weeks before the departure date. In the case of bookings made less than six weeks before departure, the tour price shall become due in full upon receipt of the Certificate of Security. Umfulana reserves the right to cancel the reservations if payment is overdue. In the event, Umfulana shall be relieved of all obligations to render the contracted services.

3. The travel documents shall be sent to the Customer either directly or via the intermediate travel agency immediately upon payment of the full travel price. The Customer shall have no right to claim the travel services without full payment of the tour price.

### § 4 Service and Price Changes

Umfulana has the right to make individual changes to the contracted services on justified grounds due to significant and unforeseeable circumstances, provided such changes are insubstantial, do not adversely affect the overall structure of the tour, became necessary after the conclusion of the contract and were not caused by a breach of good faith on the part of Umfulana. Pursuant to Section 651a (4, 5) BGB, the rights of the Customer shall remain unaffected by material changes to travel services. Umfulana is obligated to notify the Customer of service changes without delay.

Umfulana reserves the right to change prices confirmed on the booking date in the event of increases in transportation costs, including in particular increases in the price of crude oil or insurance premiums, or increases in the fees for certain services, such as harbour and airport charges, or a change in the underlying exchange rates for the particular prices. The extent of any such price changes shall correspond to the amount by which the increase in transportation costs or the charges for certain services per person or seat affects the tour price, provided that a period of at least four months lies between the conclusion of the contract (customer's receipt of the booking confirmation) and the departure date. Umfulana agrees to provide the Customer with the price calculations and to explain the calculations upon request. The same applies to taxes on flights and other travel services which are charged after conclusion of the contract.

3. Umfulana is obligated to notify the Customer of any post-contractual changes in the tour price without delay, and in any case at least 20 days prior to departure. No changes in prices are permitted thereafter.

4. In the event of a price increase in excess of 5%, the Customer has the right to cancel the travel contract without charge or demand another tour of equal value, provided that Umfulana has such a tour in its selection that can be offered without additional cost to the Customer. The Customer must claim such rights without delay or at least within a period of 14 days after submission of Umfulana's explanation for the price increase. If the Customer accepts Umfulana's offer for an alternate tour, a new contract is then entered into; any down payment already made shall be credited towards the new tour. Should the Customer decline Umfulana's offer for an alternate tour, the original contract is cancelled.

5. If, in such cases, the Customer elects to cancel the travel contract, all payments made to Umfulana are promptly refunded in full.

### § 5 Processing Fee

A processing fee of EUR 25.00 is charged for bookings under EUR 500.00. No processing fee is charged for bookings in excess of EUR 500.00.

### § 6 Cancellation by the Customer, Booking Changes

1. The Customer may cancel the travel contract at any time prior to the departure date through submission of a written notice to Umfulana.

2. If the contract is cancelled by the Customer, Umfulana shall be entitled to the following flat-rate compensation charges, taking saved expenses and

the possible reassignment of the travel services into account:

Up to 31 days before departure: 10% of the tour price or a minimum of EUR 100.00;  
30–21 days before departure: 25% of the tour price;  
20–11 days before departure: 40% of the tour price;  
10–0 days before departure: 60% of the tour price.

A refund of the tour price is not possible after the specified departure date.

The compensation charges for cancellations are based on the final tour price for each person included in the booking. The date of receipt of the cancellation notice is deemed the cancellation date for the purpose of calculating the above charges. The cancellation notice must therefore be submitted in writing for documentation purposes.

Cancellation charges in excess of the maximum rates specified above may be billed if such charges can be documented by Umfulana. It shall be incumbent upon the Customer to prove that lower or no expenses were incurred by Umfulana due to the cancellation.

In such cases the Customer is only liable for the actual costs incurred.

3. Booking changes (such as a change of hotel, rental car category or travel dates) can be made at the request of the Customer up to 21 days prior to departure for bookings that have been confirmed by Umfulana to the Customer or to the intermediate travel agency. Umfulana will charge the Customer a rebooking fee of EUR 25.00 per changed item. Any necessary telephone, fax or telegram costs may be added to the rebooking fee. It shall be incumbent upon the Customer to prove that lower or no rebooking fees were incurred by Umfulana.

### § 7 Warranties, Obligations of the Customer

1. Umfulana is obligated to provide the travel services as described and without material deficiencies that impair the value of the tour or make it unsuitable for the commonly expected or contractually agreed purposes. The Customer is obligated to report any deficiencies to Umfulana or the local agency without delay and request a remedy. Umfulana may refuse a remedy that would require unreasonable expense. Upon receipt of the travel documents, at the latest, the Customer will be informed of the times when the local tour guide or agency can be reached.

2. If Umfulana does not provide a tour guide and is not required to do so under the travel contract, the Customer is obligated to report any complaints directly to Umfulana without delay and request a remedy. Umfulana can be reached at the address specified in the travel documents. If Umfulana fails to provide a remedy within a reasonable time, the Customer may seek his own remedy and request reimbursement of the necessary expenses. Documentation must be submitted to Umfulana for any such expenses claimed by the Customer. It is not necessary for the Customer to set a deadline for remedial action, provided Umfulana has definitively refused to provide a remedy and the taking of immediate action is rendered necessary by a special interest on the part of the Customer.

3. The failure to report deficiencies without delay will result in the forfeiture of the right to reimburse-

ment unless such failure is due to reasons beyond the Customer's control. The Customer is obligated to take all reasonable measures to help resolve the problem and minimize the additional costs incurred by Umfulana (cost minimization obligation).

4. Any loss of or damage to luggage must be reported to the particular carrier without delay. This applies above all to the loss of flight baggage. The carrier is obliged to issue a written confirmation of the loss.

Failure to report lost baggage may result in the forfeiture of claims.

5. The Customer is entitled to a reduction of the tour price for travel services which do not conform to the terms and conditions of the contract. In such cases the tour price shall be reduced by the ratio of the value of the tour at the time of sale without the particular deficiency to the actual value of the tour. The right to a reduction will not apply if the deficiency is not reported without delay due to negligence on the part of the Customer.

6. If the value of a tour is considerably impaired by a deficiency and Umfulana fails to provide a remedy within a reasonable time period, the Customer is entitled by law to cancel the travel contract. In the best interest of the Customer and for documentation purposes, cancellation notices must be submitted in writing. Cancellation is only permitted after Umfulana or one of its agents (tour guide, local agency) has failed to provide a remedy within a reasonable time period. It is not necessary for the Customer to set a deadline if no remedy is possible or Umfulana or its agent has refused to provide a remedy or if cancellation with immediate effect is justified by a special interest on the part of the Customer. The same applies if the Customer cannot be reasonably expected to continue a tour for just cause. In the event of cancellation Umfulana shall be entitled to that portion of the tour price which covers services already rendered, provided such services were of interest to the Customer.

7. If the travel contract is cancelled in accordance with the above provisions, the provisions of Section 651 e (3, 4) BGB shall apply. The provisions set out in Section 651 j BGB shall remain unaffected thereby.

8. The following provisions specify and extend the legal obligations of the Customer under Section 651g (1) BGB to notify Umfulana of warranty claims under the travel contract entered into with Umfulana within one month of the scheduled completion of the tour:

All claims relating to the travel contract or services provided by Umfulana must be reported to Umfulana within one month of the scheduled return date. Valid claims submitted within the above period must be notified to Umfulana at the address specified in the travel documents and the booking confirmation. Claims may only be submitted after expiration of the above period if the deadline could not be met for reasons beyond the Customer's control. The provisions governing the suspension of the period of limitation shall remain unaffected by these provisions.

#### **§ 8 Cancellation by the Tour Operator**

Umfulana may cancel the travel contract either before or after the departure date for any of the following reasons:

1. The travel contract may be cancelled without observance of a notice period or particular form if the Customer continues to hinder the execution of the tour despite a warning issued by Umfulana, or if the Customer breaches the terms of the contract to an extent that justifies its immediate cancellation. If the travel contract is cancelled by Umfulana on such grounds, Umfulana shall continue to be entitled to the full tour price. However, in such cases Umfulana shall be required to take the value of any reduced expenses and any financial benefits derived from the reassignment of the unused travel services into account, including amounts credited by other service providers. Umfulana shall also be entitled to the full tour price if the Customer failed to inform Umfulana when booking the tour of personal circumstances that prevent the Customer from making the tour. These circumstances include in particular pre-existing medical conditions or mental or physical disabilities.

2. Either party may cancel the contract prior to the departure date due to exceptional circumstances such as war, civil commotion or strike, etc. In such cases any payments already rendered will be refunded less the costs incurred by Umfulana. This cancellation right only applies if a warning is issued by the German Ministry of Foreign Affairs. Both parties also have the right to cancel the contract if the circumstances in question arise after the departure date. In such cases Umfulana shall take all necessary measures to enable the Customer's immediate return. Any additional costs incurred in this connection shall be shared equally by Umfulana and the Customer.

3. The contract may be cancelled up to six weeks before the departure date if the tour is not booked by the minimum number of participants specified by the operator or the local authorities, provided that a reference to the minimum number of participants required is included in the description of the particular tour. Umfulana is obligated in any case to notify the Customer immediately upon the occurrence of the circumstances necessitating the cancellation of the tour and to forward a cancellation notice to the Customer without delay. In such cases the Customer shall receive an immediate refund of the tour price paid. Umfulana is also entitled to cancel certain parts of a tour if a minimum number of participants is not reached, provided the tour price is reduced accordingly. The Customer must be notified if it becomes apparent in advance that the minimum number of participants required cannot be reached. Umfulana is likewise entitled to cancel the travel contract up to six weeks before the departure date if the maximum number of participants specified by the operator or the local authorities is exceeded, provided that a reference to the maximum number of participants allowed is included in the description of the particular tour.

4. The contract may be cancelled up to four weeks before the departure date if, despite all efforts, the execution of a tour cannot be reasonably expected of Umfulana because the number of bookings is so low that the cost of carrying out the tour would impose an undue economic burden on the company. However, the right to cancel a tour on such grounds only applies if the cancellation is due to documented circumstances beyond the control of Umfulana.

5. Umfulana is obligated to notify the Customer without delay if it is determined that a tour cannot be executed due to a failure to reach the minimum number of participants required.

#### **§ 9 Liability**

1. Umfulana's liability for material and non-material damages other than bodily injury is limited if

a) the Customer's loss or damage was not caused intentionally or through gross negligence;  
b) Umfulana is held responsible for a loss caused solely by negligence on the part of a service provider.

2. Umfulana shall accept no liability for disruptions to services that are provided by third parties for which Umfulana merely acts as an intermediary (such as sporting events, theatre performances, exhibitions, excursions, etc.) and are explicitly designated as third-party services in the general or specific service descriptions.

3. Umfulana's liability for damages is limited or excluded if damage claims against service providers are only permitted, are limited or are excluded under certain conditions by legal provisions applying to service providers.

#### **§ 10 Limitation Periods, Prohibition of Assignment of Claims**

1. The limitation period for claims against Umfulana due to tour deficiencies is two years after the scheduled completion of the tour, provided that the deficiencies were reported to Umfulana. The limitation period for claims that were not reported to Umfulana is one year.

This applies above all to claims resulting from the breach of pre- and post-contractual obligations and secondary obligations under the travel contract.

The provisions governing the suspension of the period of limitation set out in Section 651 g (2) BGB shall remain unaffected by these provisions. Any such suspensions shall be lifted by the issuance of a written denial of the claims by Umfulana.

2. Claims stemming from tours may not be assigned to a third party, including the Customer's spouse, on any legal grounds whatsoever. This applies to claims stemming from or associated with the travel contract as well as to claims resulting from unlawful acts. Likewise excluded is the pursuance of assignment rights in the Customer's own name in a court of law.

3. In cases involving bodily injury to or the death of a Customer, the right to compensation expires three years after the conclusion of the particular tour.

4. Customers may only offset claims that are undisputed by Umfulana and have been awarded by a final court ruling.

#### **§ 12 Jurisdiction, Miscellaneous Provisions**

1. Should any of these provisions be or become ineffective, the validity of the other provisions and the effectiveness of the travel contract shall remain unaffected thereby. The ineffective provision shall be replaced by a suitable provision subject to mutual agreement.

2. These Terms and Conditions are subject to the laws of the Federal Republic of Germany.