

# Terms & Conditions of Travel of the Company SEA CLOUD CRUISES GmbH in its capacity as Tour Organizer for SY SEA CLOUD II

Version August 2004

Dear Guest,

We hope that you have found the appropriate vacation trip in our program, and we welcome you to the exclusive circle of SEA CLOUD CRUISES GmbH (SCC) guests.

Please read the following

## Information & Conditions

carefully so that you will know exactly what you can expect from us. The information & conditions regulate the contractual relationship between you and us, and you shall recognize them with your reservation. We are striving to relieve you of troubles and worries in as far as humanly possible. The delineation of our responsibility is designed to provide clarity regarding what you may expect and our liability.

### 1. Application & Travel Confirmation

**1.1.** Via your tour application, you are offering SCC, in a binding manner, the opportunity to close a travel agreement. Your tour registration may transpire in writing, verbally or by telephone. We will become bound to the travel agreement only from the time that we confirm the reservation and the price to you or your travel agent in writing.

**1.2.** The applicant is liable for contractual obligations. He shall likewise bear accessory liability for other tour participants that he registers.

**1.3.** You shall receive a travel confirmation upon conclusion of the contract or without delay thereafter. The confirmation shall contain all essential information regarding travel performances you have reserved, provided that said information does not already follow from the travel brochure.

**1.4.** All personal data, which you submit to us for handling your trip, is subject to the provisions of the Federal Data Protection Act. Data will be protected against improper use.

**1.5.** If the subject-matter of the confirmation of the holiday deviates from the subject-matter of the booking, then a new offer by the tour operator is in existence to which it is bound for the duration of 21 days. The contract comes into existence on the basis of this new offer if the traveler declares his acceptance to the tour operator within the commitment period.

### 2. Payment

**2.1.** You are required to make a down-payment of 10% per person within one week following receipt of the travel confirmation and the invoice. The remaining balance shall be due for payment four weeks prior to commencement of travel and before receipt of travel documents (tickets, etc.). The entire tour price is due for immediate payment in the event of applications made at short notice.

**2.2.** If the traveler is in default with a payment to SCC, can cancel the contract. In this case SCC can claim cancellation fees in accordance with paragraph 5.2.

**2.3.** The travel contract will be cancelled automatically if payment is not received by the beginning of travel. In this instance, SCC will be entitled to demand corresponding cancellation charges as compensation for damages according to paragraph 5.2.

**2.4.** The customer is required to bear the cost of ancillary performances, such as acquiring a visa, etc., as well as the costs for reservations or inquiries made by telegraph or telephone.

### 3. Performances and Prices

**3.1.** The scope of contractual performances arises from the travel itinerary and from the travel confirmation.

#### 3.2. Service Package

Included are:

Cruise in the reserved cabin including full board and soft drinks. Table wines are included at meal times.

- all transfers and luggage transport mentioned in the program;
- all overnight stays mentioned in the program;
- all meals mentioned in the program;
- all sightseeing tours mentioned in the program (German or English), if not stated otherwise;
- harbor and docking fees

The following items are not included:

tips, excess baggage, additional meals, beverages (so far as not expressly included), optional excursions, other personal expenses.

#### 3.3. Flights

SCC only arranges flights as intermediary if this is expressly stated in the confirmation of travel. Carriage is booked in the Tourist class; also in the Business or First Class at extra tariff cost in as far as these are available. Flights on days other than the travel days booked e.g. as a result of pre- or post-programs can lead to extra costs. The airlines always only accept seat reservations as non-binding wishes.

The conditions of carriage of the airlines for whose flights we act as intermediary are binding. We shall be pleased to provide these to you on request.

Depending on the selection of flights it can happen that the outward flight is in the late afternoon or evening, but the return flight is in the morning. There is no claim for compensation for catering services not used at the location.

#### 3.4. Baggage conveyance

Up to 20 kg baggage per flight passenger will be conveyed (1st Class 30 kg). For travel to some countries (incl. USA, Canada, Mexico and within Germany) measurements are based not on the weight, but instead on the number of baggage items and their dimensions. Excess baggage can in principle be carried at extra cost. Children under the age of two have no claim to baggage conveyance.

Please report damage or delays in delivery promptly on the spot to the relevant airline via a Property Irregularity Report (P.I.R.). The report is a prerequisite for any liability.

### 3.5. Services not Used by Traveler

SCC shall endeavor to obtain reimbursement of saved costs from the service provider if the traveler fails to utilize travel services due to premature return journey and in other significant cases. This shall not apply if services are fully irrelevant or if a refund is opposed by legal or official regulations. SCC is entitled to retain 20% of the refundable amount as compensation for additional effort and expenses.

### 4. Modification of Services and Prices

**4.1.** A change of airline company, of aircraft or of the departure and arrival airport may become necessary should an airline cancel a flight and e.g. in the event of failure of the airline to comply with the flight schedule. Right is retained to effect such kind of change or modification in such or similar instances.

Only costs, equivalent to a second class railroad journey, will be refunded in the event of substitute transportation.

Changes in the trip's itinerary are possible for ship voyages, e.g., if the vessel could not adhere to its schedule at the time that travel commences because of an unforeseen technical defect that causes postponement of the trip itinerary or, for example, if the vessel's management alters the vessel's course in the interest of passengers' safety.

**4.2.** Any such and comparable divergences from and modifications to individual travel performances contained in the travel agreement, which become necessary after the agreement is closed, and which are not induced by the tour organizer contrary to the principles of good faith and trust, are solely permissible, if they are not substantial and if they do not impede the overall tailored style of the reserved trip.

The modified performance shall supersede the performance due under contract. Contingent claims under warranty shall remain unaffected, in as far as substitute performance is flawed.

In the event that the overall tailored style of the reserved trip is unreasonably modified due to said substitute performances, then we shall grant you the option to change your reservations, free of charge, or to cancel the travel agreement without paying any fees. SCC shall undertake to immediately inform you of any such divergences or modifications, in as far as possible.

**4.3.** SCC reserves the right to alter the indicated prices which have been confirmed on booking in the case of an increase of transportation costs or of fees for particular services, such as port or airport charges, or in the case of an alteration of the exchange rates applicable to the holiday in question, to the extent to which this increase has an effect on the price of the holiday per person or per seat, provided more than 4 months lie between the conclusion of the contract and the stipulated date of the holiday.

In the case of a subsequent amendment to the price of the holiday or of an amendment to an essential travel service, the tour operator must inform the traveler accordingly without delay, at the latest, however, 21 days before commencement of the holiday. Price increases after this period are not permissible. In the case of price increases of more than 5% or in the case of a considerable amendment to an essential travel service, the traveler is entitled to withdraw from the tourist travel contract free of charge or to demand to take a holiday which is at least of the same value, if the tour operator is in a position to offer such a holiday from its range of holidays at no extra cost for the traveler.

The customer must assert these rights without delay against the tour operator after the latter's declaration of the price increase or of the amendment of the travel service.

### 5. Cancellation, Changing Reservations, Substitute Persons

**5.1.** You may cancel your trip in writing at any time prior to commencement of travel. Your cancellation notice shall become effective on the date we receive it.

**5.2.** If one of the parties cancels the contract or if you do not start the journey, SCC may demand reasonable compensation for arrangements it has made in conjunction with the trip and for its expenses, even if SCC has not yet confirmed the trip or if you fail to begin the journey.

Our flat rate claim to reimbursement consist of a processing fee of EUR 25.00 per person for cancellation of a reserved trip up to 150 days prior to commencement of travel. The following annulment fees shall arise in the event of later cancellation:

- 5% of the tour price for cancellation 149-100 days prior to commencement of travel;
  - 10% of the tour price for cancellation 99- 50 days prior to commencement of travel;
  - 25% of the tour price for cancellation 49- 22 days prior to commencement of travel;
  - 50% of the tour price for cancellation 21- 15 days prior to commencement of travel;
  - 75% of the tour price for cancellation 14 days or less prior to commencement of travel.
- Costs that the service provider charges to SCC, e.g., empty bed fee charged by a hotel for cancellation at short notice or special fees for cruises, shall be additionally invoiced in the event that individual or group trips are annulled. The traveler is free to prove to SCC that the loss is less than the aforementioned flat rate. In this case the lower proven loss will be applied in place of the flat.

**5.3.** We will endeavour to modify the travel registration (change reservations) subject to availability, at your request, up to 75 days prior to commencement of travel. Any change of reservations made as of the 74th day prior to commencement of travel will require you to serve notice that you are canceling the reserved trip, and it will require subsequent re-registration. This shall not apply for requested changes of reservations that solely cause substantiated, minor expenses.

Modification of the travel date, the travel destination, accommodations or the means of transportation shall apply as a change of reservations.

**5.4.** You may appoint a substitute person for yourself up to commencement of travel. In such case you are required to inform the tour organizer thereof. The tour organizer may object to any such substitute person on the basis of good cause, (e.g., special require-

ments linked to the trip, statutory bans, refusal by airlines or by hotel operators, etc.). If a third party enters into the contract, then he and the registrant are jointly and severally liable in respect of SCC for the price of the holiday and for additional costs incurred through the entry of the third party.

**5.5.** Cancellation fees and fees for changing reservations are due for immediate payment.

#### **6. Travel Cancellation Fee Insurance**

SCC can offer an insurance upon request.

#### **7. Cancellation and Rescission of Agreement by the Tour Organizer**

**7.1.** SCC may rescind the travel agreement after commencement of travel, without complying with a term of notice, if travelers persistently disturb execution of the trip despite an appropriate warning issued by the tour organizer. The same shall apply if anyone should behave in a manner which is gravely in breach of contract. SCC shall, however, retain its claim to the tour price. The person causing the disturbance is liable for any possible extra cost for return transportation.

However, SCC is required to allow credit for the value of saved costs as well as for advantages which may be obtained from another application of services not used, including possible reimbursements from service providers.

**7.2.** SCC may rescind the trip prior to commencement of travel

**7.2.1.** up to two weeks prior to commencement of travel,

if a minimum number of 10 persons is not attained, provided that the minimum number of persons is stated in the brochure. The cancellation notice will be immediately forwarded to you. Your paid tour price will be immediately refunded;

**7.2.2.** up to four weeks prior to commencement of travel

if the trip can't be executed for a valid reason, even though SCC has exhausted all possibilities in attempting to render travel performances, (e.g., via substitute transportation, modification of the travel route, etc.). Cancellation is solely possible, if execution of said trip would mean that the tour organizer is forced to exceed his limit of economic sacrifice.

Your paid tour price will be refunded immediately.

#### **8. Rescission of the Contract due to exceptional Circumstances**

**8.1.** SCC or the traveler may both rescind the travel agreement if the trip is rendered considerably difficult, endangered or impeded due to an Act of Providence, (e.g., war, internal unrest, natural catastrophes). SCC shall immediately refund the paid tour price in such instance. However, SCC may demand compensation for rendered or outstanding travel performances.

**8.2.** If a trip is canceled subsequent to commencement of travel, then the tour organizer is obligated to undertake appropriate measures, and he is especially obligated to provide return transportation for travelers, if possible. The contracting parties shall each bear one half of the costs for return transportation. The traveler will be required to bear all additional expenses.

#### **9. Liability**

**9.1.** We shall bear liability within the scope of the due diligence of a prudent businessman:

**9.1.1.** for conscientious preparation of the trip;

**9.1.2.** for careful selection and monitoring of service providers, (e.g., transportation corporations, hotel operators, etc.);

**9.1.3.** for due and proper rendering of contractually covenanted tour performances, under consideration of applicable legal provisions of the respective country and place of destination.

**9.2.** However, we are not liable for information contained in hotel and local site brochures. We have no influence on their origin. We also bear no liability if national political conditions and contingent entry regulations change at the point of destination, after this brochure is printed, that encumber entry into the affected county or point of destination or which render the same infeasible. We shall inform you at short notice of any such essential, subsequent changes, in as far as possible;

**9.3.** We are liable for the fault of a person entrusted with rendering a service, unless otherwise stipulated under these Terms & Conditions of Travel or stipulated by prevailing conditions, and provided that the person, entrusted to render service, had caused an instance of damage not only upon the occasion of performing contract.

The measure of indebted diligence shall be determined by conditions at the site of service rendered. Your tour will primarily take you to foreign countries, where foreign living conditions and where laws, that are partially foreign to us, prevail.

#### **9.4. Scope of Liability**

**9.4.1. SCC is not liable for faulty performances among mediated third party services, provided that expressed reference is made to mediated services in the travel documents and on the travel confirmation. Having stated this requirement, the following provisions shall solely apply for flights for which the traveler receives a corresponding ticket:**

SCC, in its capacity a mediator, is not liable for performance of transportation services, rather the corporate carrier, is responsible. SCC is not an air freight carrier. The liability of airline companies is based on their own terms and conditions of transportation, which can be provided by SCC upon request. For all remaining purposes, airlines' liability is restricted by international conventions and regulations, e.g., by the Warsaw Convention and EU Directive No. 295/91 dated February 4, 1991. We will send these to you upon request. Liability for damages caused by delay is excluded.

**9.4.2.** You are required to bear responsibility for participating in sporting and holiday activities. You should examine sport facilities, equipment and vehicles prior to using them.

We may only be held liable for accidents that occur at sporting events or at other holiday activities if fault applies to us. We recommend that you take out sport accident insurance coverage.

**9.4.3.** We point out that sometimes airline companies, which operate in foreign countries, do not always provide the same high technical, service and comfort standards as foreign and domestic airlines that fly to and from Germany.

#### **9.5. Warranty**

**9.5.1. The traveler may demand relief if the tour is not performed in compliance with contract. SCC may refuse relief if it necessitates disproportionate expense.**

**9.5.2. After returning from the tour, the traveler may demand reduction of the tour price, commensurate with reduced performance, in the event that the demand for relief was unsuccessful and the trip was not performed in compliance with contract. This shall not affect contingent, more extensive claims for subsequent reduction of the tour price.**

**9.5.3. The traveler may rescind the travel agreement if the tour organizer failed to perform relief, within a reasonable term, or if the tour organizer formally states that relief cannot be performed, and if the trip will be considerably impaired due to performance of services under noncompliance with contract. If the agreement is rescinded in this manner, then SCC is obligated to take appropriate measures, and especially to provide return transportation for travelers, if required.**

**9.6 The traveler may demand compensation for damages, and more precisely for vacation time spent to no avail, provided that the tour organizer is liable for a circumstance that caused a flaw in the tour.**

#### **9.7 Restriction of Liability**

**9.7.1.** The tour operator's contractual liability is limited to three times the tour price, provided that damages sustained by the traveler are not caused by intent or gross negligence. The same applies in as far as the tour organizer is responsible for damages incurred by a traveler solely through the fault of a service provider.

**9.7.2.** The tour organizer is not liable for defective performances that arise in conjunction with services mediated as third party performances, (e.g., sporting events, attendance at theaters, exhibitions, etc.), and which are expressly identified as third party performances in the brochure.

**9.7.3.** A claim to damage against the tour organizer is restricted or excluded, if - under legal provisions applicable to required, rendered performances of a service provider - a claim for damage against a service provider may solely be asserted under certain conditions or limitations or if such claim is excluded under certain conditions.

**9.7.4.** If the tour organizer assumes a position equivalent to a freight carrier, then his liability shall be regulated by the provisions of the Air Transportation Act in conjunction with Conventions covenanted in Warsaw, The Hague, Guadalajara and the Montreal Agreement (solely for flights to Canada and the USA). As a rule, the Warsaw Convention limits the freight carrier's liability for death or physical injury and for loss and damage of baggage. If the tour organizer constitutes a service provider, in other instances, then he shall bear liability in accordance with provisions that apply for a service provider.

**9.7.5.** If the tour organizer assumes a position equivalent to a carrier, within the scope of sea voyages, then his liability shall be regulated in compliance with provisions of the Commercial Code and the Inland Waterways Transportation Act.

#### **9.8. Duty to Cooperate, Complaints**

**9.8.1.** In the event of defective performance, each traveler is required to undertake whatever may be reasonably expected of him to contribute to alleviate the defect and to keep any potential damages to a minimum.

**9.8.2.** If you should have reason for complaints, contrary to our expectations, then immediately inform our tour management on site. If a respective local tour manager or tour agent is not available or cannot be reached, or if they cannot alleviate a defective performance, then please turn to the service provider (transfer company, hotel operator) and/or the tour organizer or to his contact address in the area of destination. A traveler is not entitled to claims if he culpably fails to perform the above obligations.

**9.8.3.** Tour guides are not authorized to formally recognize any claims whatsoever.

#### **10. Exclusion of Claims and Statute of Limitation**

**10.1.** Your claims are to be asserted within one month following the contractually covenanted date of return. Claims are to be stated in writing and forwarded to SEA CLOUD CRUISES GmbH, An der Alster 9, 20099 Hamburg. You may only assert claims after expiration of the above term, if you were hindered from complying with the deadline through no fault of your own.

**10.2.** All claims arising from the travel agreement shall lapse six months following the contractually covenanted date of return.

**10.3.** Claims for damages due to prohibited actions shall lapse in three years.

**10.4.** The statute of limitations is suspended if the tour organizer initially states to you that complaints and claims are being examined. The suspension is lifted when the tour organizer informs the customer of the results of his examination with regard to the customer's claims.

#### **11. Insurance Coverage**

**11.1.** You are insured against transportation risk during flights, within the scope of lawful provisions.

**11.2.** For your own safety, we recommend that you take out a travel insurance policy that includes baggage, accident, health, interruption and liability coverage.

#### **12. Passport, Visa, Customs, Foreign Exchange and Health Regulations**

**12.1.** You will receive essential information on the formalities required for your trip. This information will be conveyed along with travel documents and through the travel description contained in the catalog. Please heed this information, as each traveler is himself responsible for compliance with these regulations. You shall bear all costs and the negative impact of failure to comply with said information.

**12.2.** Please ensure that your passport, which you will require for your trip, is still valid, if possible for a period of six months beyond the planned travel date. Children require a children's passport or they must be entered in the passport of an accompanying parent.

This information applies for German citizens. Foreign nationals and holders of foreign passports are requested to turn to their relevant consulate or embassy for appropriate information.

**13. General Remarks**

**13.1.** Printing errors and computational errors in the brochure or on the travel confirmation shall entitle SCC to avoid the validity of the travel agreement. In such instance, SCC is required to compensate the traveler for the proven loss incurred by relying on a declaration.

**13.2.** All information in our tour description corresponds to the current status of information at the time of printing.

**13.3.** Invalidation of individual provisions of the travel agreement shall not result in invalidity of the entire travel agreement. The same shall apply for these same Terms & Conditions of Travel.

**13.4.** Oral agreements are only valid if we have confirmed them in writing.

**13.5.** The conditions of the respective shipowner or transportation corporation shall

apply in the event of travel by ship, combined air and ship travel, combined train and ship travel and for bus trips. We will provide you with a copy of their conditions upon request.

**13.6.** The Free and Hanseatic City of Hamburg is deemed venue for courts of law for all registered businessmen, and for persons who do not have a domestic place of jurisdiction, as well as for person who moved their place of residence or usual abode to a foreign country, after closing the travel agreement, or whose place of residence or usual abode is not known at the time that a suit is filed, and for litigation as a defendant.

**Tour Organizer**

SEA CLOUD CRUISES GmbH

An der Alster 9

20099 Hamburg

Germany

Telephone: +49-40-30 95 92-0

Fax: +49-40-30 95 92-22

E-mail: [info@seacloud.com](mailto:info@seacloud.com)