

# Terms and Conditions of Hannes Hawaii Tours

Dear guest,

the following Terms and Conditions, when effectively agreed, become part of the travel contract concluded between you, hereinafter referred to "you" or "customer", and Hannes Blaschke GmbH, acting as Hannes Hawaii Tours, hereinafter referred to as "HHT". They complement the legal provisions of Section 651a-m of the BGB (Bürgerliches Gesetzbuch – German Civil Code) and the information regulations for tour operators according to Sections 4-11 of the BGB-InfoV (Ordinance on the Requirement to Provide Information and Supporting Documents under Civil Law). **Please read these Terms and Conditions carefully before you make your booking!** The English version of this text serves only for information and is not part of this legal transaction, please refer to clause 18.

## 1. Position of HHT in Flight Services

- 1.1. The travel services of **HHT** usually **do not include air transport services**. **HHT** does not offer flight services as own services or as part of the package tour offered and performed by **HHT**.
- 1.2. Accordingly, **HHT** merely arranges flights. In case of booking, the air transport contract will exclusively come about between the customer and the airline or other suppliers of the air flight as contractual air carrier.
- 1.3. Accordingly, **HHT** is not liable for the statements of airlines on prices and services, for the performance of the flight service itself, cancellations, non transport, flight delays or for delays, damages and loss of flight baggage.
- 1.4. The above provisions shall not apply as far as, according to the principles under Section 651a Subsec. 2 BGB and the related court practice, **HHT** gives the impression in connection with the flight services arranged and offered to the customer to provide contractually agreed travel services in its own responsibility.
- 1.5. In its position as an agent, **HHT** is in particular obliged
  - a) to point out **HHT**'s position as an agent of flight services, indicating the respective airline resp. provider or contract partner of the customer in case of booking.
  - b) to display prices of the arranged service and, when applicable, state any agency fees to be paid to **HHT** separately from the price of the package tour.
  - c) to issue a booking confirmation for the customer according to the aforementioned specifications which states the price and the payable commission of the arranged service.
- 1.6. The above provisions do not affect the liability of **HHT** under the agency contract for the arranged flight service. Equally the obligation of **HHT**, in its position as an agent, due to the **EU regulation Nr. 2111/2005 on informing air transport passengers of the identity of the operating air carrier** remains unaffected.

## 2. Conclusion of Travel Contract, Customer Obligations

- 2.1. The following applies to **all types of bookings**:
  - a) **The offer of HHT and the customer's booking are based on** the description of the package tour offer, the important travel information as well as the supplementary information contained in the basis of the booking, as far as it is available to the customer upon booking.
  - b) **Information contained in hotel brochures and similar lists** not issued by **HHT** are non-binding for **HHT** and its obligation to perform, unless they have been made part of **HHT**'s obligation to perform by express agreement with the traveler.
  - c) If the content of the booking confirmation deviates from the content of the booking, then it shall form a new offer of **HHT**. The contract shall be concluded on the basis of the new offer when the customer accepts it by express declaration, advance payment or payment of the balance, or by making use of the travel services.
  - d) The customer making the booking shall be liable for the contractual obligations of fellow travelers for whom he/she makes the booking in the same way as for his/her own obligations, provided he/she has assumed a respective obligation by express and separate declaration.
- 2.2. The following applies to bookings made **by word of mouth, in writing, by telephone, by e-mail, by fax**:
  - a) With the booking, the customer bindingly offers the conclusion of the travel contract to **HHT**. The traveler shall be bound by the booking for five working days.
  - b) The contract shall be concluded upon receipt of the booking confirmation (confirmation of acceptance) of **HHT** which does not require a certain form and therefore word of mouth and confirmations by telephone are also legally binding for the customer. After the customer's word of mouth booking or booking by telephone **HHT** supplies the customer with a written booking confirmation. Word of mouth bookings and bookings made by telephone with respective binding word of mouth confirmations and confirmations by telephone are still binding, even if the customer does not receive a written confirmation.
- 2.3. Following applies to the conclusion of contract for bookings which are made online without special means of individual communication (contract within electronic commerce):
  - a) The process of online bookings is explained to the customer on **HHT**'s website.
  - b) As far as a possibility of direct booking is offered by **HHT**, the customer has the possibility to correct entries, before making a billable and binding booking, which is explained to the customer in advance.
  - c) All languages which are possible for the transaction of the online booking are indicated. The German language is exclusively legally relevant.
  - d) As far as the wording of the contract is recorded in **HHT**'s online booking system the customer will be informed about this and has the possibility to access the wording subsequently.

- e) By activating the button "booking with an obligation to pay" the customer offers **HHT** a binding conclusion of the contract. The customer is bound to this for five days after sending his electronic declaration.
  - f) The receipt of the booking is immediately confirmed electronically to the customer.
  - g) The transmission of the contract offer by activating the button "booking with an obligation to pay" does not substantiate any claim that a contract has been concluded referring to the booking specifications. **HHT** however is free to accept or not accept the offer of the customer.
  - h) The contract is concluded when the customer receives the booking confirmation from **HHT**.
  - i) The contract is concluded with no further notice of receiving the booking offer as per Section f) if the booking confirmation is immediately shown on the customer's screen after activating the button "booking with an obligation to pay" (real-time booking). In this case the customer has the possibility to store and print the booking confirmation. The customer's use of this possibility however it is not mandatory for the conclusion of the contract. **HHT** will additionally submit the booking confirmation by email, email attachment, by mail or by fax.
- 2.4. **HHT** points to the fact that, according to the provisions of law (Section 312g Subsec. 2 Sentence 1 No. 9 BGB), there is no right of revocation in connection with package tour contracts, even if they are concluded by way of distance selling according to Sections 2.2. and 2.3 above. The other rights of the customer remain unaffected.

## 3. Payment

- 3.1. After conclusion of the contract and delivery of the Bankruptcy Insurance Note (Sicherungsschein) in accordance with Section 651k BGB, an advance payment amounting to 25 % of the travel price shall become due for payment. Payment of the balance shall become due for payment **30 days** before the start of travel, provided the Bankruptcy Insurance Note was submitted and the travel can no longer be cancelled for the reason mentioned under Section 6.
- 3.2. If the customer fails to pay the advance and/or the balance in accordance with the agreed payment terms, although **HHT** is ready and able to properly perform the contractual services, and there does not exist a legal or contractual right of retention on the part of the customer, **HHT** reserves the right, after sending a reminder and setting a period, to rescind the travel contract and charge the customer cancellation costs in accordance with Section 6.

## 4. Changes to Services

- 4.1. Changes to essential travel services in deviation from the agreed content of the travel contract that become necessary after conclusion of the contract and have not been caused by **HHT** in breach of good faith shall only be allowed when such changes are not substantial and do not impair the overall nature of the travel.
- 4.2. Possible warranty claims remain unaffected as far as the changed services involve deficiencies.
- 4.3. **HHT** is obliged to inform the customer about essential changes to services immediately after receiving knowledge of the reason for the change.
- 4.4. In case of a substantial change in an essential travel service, the customer shall be entitled to rescind the travel contract free of charge or demand participation in another travel package of at least equivalent value when **HHT** is in a position to offer such travel from its program without charging the customer a higher price. The customer must assert such rights against **HHT** immediately after **HHT**'s declaration on the change to the travel service or the cancellation of travel.

## 5. Price Increase

- 5.1. **HHT** reserves the right to change the price agreed in the travel contract in case of an increase in transportation costs or in charges for certain services, such as port or airport fees, or in case of a change in the rates of exchange applicable to the respective travel, in accordance with the following provisions:
- 5.2. An increase of the travel price shall only be admissible when there is a period of more than 4 months between the date of conclusion of the contract and the agreed travel date and the circumstances leading to the increase had not occurred before conclusion of the contract and were not foreseeable to **HHT** upon conclusion of the contract.
- 5.3. In case of an increase in the transportation costs in force upon conclusion of the travel contract, in particular in fuel costs, **HHT** can increase the travel price according to the following calculation:
  - a) In case of an increase on a seat basis, **HHT** can charge the customer the additional amount.
  - b) In other cases, the additional transportation costs charged by the transport

provider per means of transport are divided by the number of seats of the contractual means of transport. **HHT** can charge the customer the resulting additional amount for the individual seat.

- 5.4. If charges such as port or airport fees payable by **HHT** are increased above the amount applicable at the time of conclusion of the contract, the travel price can be increased by the corresponding pro-rata amount.
- 5.5. In case of a change in the rates of exchange after conclusion of the travel contract, the travel price can be increased to the extent the travel costs incurred by **HHT** have increased due to such change.
- 5.6. In the case of a subsequent change of the travel price, **HHT** shall inform the customer immediately **after getting knowledge of the reason for the change. Price increases shall only be admissible when received by the customer not later than 21 days before the start of travel.** In case of a price increase by more than 5 %, the customer shall be entitled to rescind the travel contract without incurring any charges or demand participation in another travel of at least equivalent value when **HHT** is in a position to offer such travel from its program without charging the customer a higher price. The customer must assert the **forementioned rights** against **HHT** immediately after having been notified by **HHT** of the price increase.

## 6. Cancellation by the Customer Before the Start of Travel / Cancellation Costs

- 6.1. The customer can cancel travel at any time before the start of travel. Cancellation is to be declared to **HHT** via the address provided above/below. For evidence purposes, the customer is recommended to declare cancellation in writing.
- 6.2. If the customer cancels before the start of travel or fails to take part in travel (no-show), **HHT** will lose its entitlement to the travel price. As far as **HHT** is not responsible for the cancellation or there is no event of force majeure, **HHT** may claim reasonable compensation for the travel arrangements made until cancellation and its expenses incurred depending on the respective travel price.
- 6.3. In calculating compensation, **HHT** has taken usually saved expenses and a usually possible alternative use of the travel services into consideration. The compensation shall be calculated depending on the date of receipt of the customer's notice of cancellation as follows:  
**own arrival, travels with arranged flights**
  - until the 31<sup>st</sup> day before start of the travel– 25%
  - from the 30<sup>th</sup> to the 25<sup>th</sup> day before start of the travel– 40%
  - from the 24<sup>th</sup> to the 18<sup>th</sup> day before start of the travel– 50%
  - from the 17<sup>th</sup> to the 11<sup>th</sup> day before start of the travel– 60%
  - from the 10<sup>th</sup> to the 4<sup>th</sup> day before start of the travel– 80%
  - from the 3<sup>rd</sup> day before start of the travel until the day the travel starts or in case of no-show–90% of the travel price.
- 6.4. In any case, the customer shall be free to prove to **HHT** that it has incurred no damage or only damage substantially lower than the flat-rate amount it has claimed.
- 6.5. Cancellation terms may vary from the above mentioned for certain travel offers. The traveler shall be informed by these cancellation terms within the travel brochure and description.
- 6.6. Instead of the flat-rate amounts shown above, **HHT** reserves the right to claim a higher concrete compensation, provided **HHT** proves that it has incurred substantially higher expenses than the respectively applicable flat-rate amount. In such case, **HHT** shall be obliged to concretely specify and substantiate the claimed compensation, paying due regard to saved expenses and a possible alternative use of travel services.
- 6.7. The customer's legal right pursuant to Section 651 b BGB to appoint a suitable substitute participant remains unaffected by the above provisions.
- 6.8. **HHT** recommends getting travel cancellation insurance and other relevant insurance covering costs for repatriation in case of accident or illness.

## 7. Rebooking

- 7.1. After conclusion of the contract the customer shall not have any claims in regards to changing the travel date, travel destination, place of departure, accommodation or means of transportation (rebooking). In case **HHT** changes the booking according to the customer's demand, **HHT** may request a rebooking fee per customer as following fixed periods. As far as no other conditions are agreed upon in individual cases before rebooking, the rebooking fee for rebooking made until the second scale of cancellation of the particular type of travel according to Section 6 above a fee of € 25,- per rebooking is charged.
- 7.2. Demands for rebooking by the customer which occur after the fixed periods, as far as the demands are feasible, can only be executed after a cancellation of the booking according to Sections 6.2. to 6.5. and new booking at the same time. This is not applicable for rebookings which only cause minor costs.

## 8. Unused Services

If the customer does not make use of individual travel services duly offered to him/her for any reasons that he/she is responsible for (e.g. due to early return or for other compelling reasons), he/she shall not be entitled to a pro-rata refund of the travel price. **HHT** will make an effort to obtain reimbursement for saved expenses from the service provider. This obligation shall not apply

when the services are absolutely insignificant or when a refund is in conflict with legal or official regulations.

## 9. Cancellation for Not Reaching the Minimum Number of Participants

- 9.1. **HHT** can cancel the travel subject to the following provisions when the minimum number of participants is not reached:
  - a) The minimum number of participants as well as the latest possible time of cancellation by **HHT** must be specified in the respective travel brochure or, in case of uniform regulations for all travels or certain types of travels, in a general note in the catalogue or in a general service description.
  - b) **HHT** must indicate the minimum number of participants and the latest possible date of cancellation in the booking confirmation or include a reference to the respective specifications in the catalogue.
  - c) **HHT** is obliged to immediately notify the traveler of the cancellation of travel as soon as it is certain that the travel will not take place because the minimum number of participants has not been reached.
  - d) A cancellation by **HHT** later than four weeks before the start of travel is inadmissible.
- 9.2. In case of cancellation, the customer can demand participation in another travel of at least equivalent value when **HHT** is in a position to offer such travel from its program without charging the customer a higher price. The customer shall assert this right against **HHT** immediately after receiving the notice of cancellation of travel from **HHT**.
- 9.3. When the travel does not take place for this reason, the customer shall immediately be refunded any payments made on the travel price.
- 9.4. **HHT** points to the customer that cancellation for not reaching the number of participants does not entitle the customer to cancel free of charge any flights arranged by **HHT** with airlines or other tourist enterprises. The customer is recommended to book flight rates which allow cost-efficient cancellations of flights in case of cancellation of travel.

## 10. Reasons of Termination on Grounds of Conduct

- 10.1. **HHT** shall terminate the contract without notice if the customer continues to disturb the tour despite proper admonishment by **HHT** or if the customer's conduct violates the contract to an extent that an immediate termination of the contract is justified.
- 10.2. If **HHT** cancels the tour it has the right to retain the travel price, however, **HHT** must make due cost adjustments to take into account the value of any saved expenditures as well as those benefits gained from services not availed of by the customer and put to other use, including any refunds received from suppliers.

## 11. Customer's Obligation of Deficiencies Notification during Travel; Termination of Travel Contract by the Traveler/Customer; Obligations of the Customer in Reference to Flight Travel Baggage; delayed Receipt of Travel Documents; Information about Alternative and Online Dispute Resolution (ADR/ODR)

- 11.1. The obligation to notify deficiencies under §651 d Subsec. BGB applies as follows to **HHT** travels:
  - a) The customer is obligated to immediately notify the local **HHT** representative of any deficiencies and demand redress.
  - b) The customer shall be provided with the information of **HHT**'s representative (name, availability and contact details) with the delivery of the travel documents at the latest.
  - c) If under the terms of contract there is no requirement for a local representative or tour guide the customer is obliged to immediately file the complaint directly to **HHT** at the below-mentioned address.
  - d) **Claims made by the customer shall only remain valid if the failure to notify a default does not result from any responsibility of the customer.**
- 11.2. Incoming agencies, service providers and their staff members are neither entitled nor authorized by **HHT** to confirm deficiencies or recognize claims against **HHT**.
- 11.3. If travel is seriously impaired as a result of a deficiency in the travel, the customer can terminate the contract. The same shall apply when, as a result of such deficiency, the customer cannot be reasonably expected to participate in the travel for good cause apparent to **HHT**. Termination shall only be admissible after **HHT** or their agents (to the extent there are any and they have been contracted to act as contact persons) have allowed a reasonable period fixed by the customer to expire without providing any form of redress. The provision of a period is not required if the remedy is impossible or is refused by **HHT** or its agents or if the immediate termination of the contract is justified through a special interest on the part of the customer.
- 11.4. In the event of loss or delay of luggage when travelling by air, the customer must immediately report any damage or delay in delivery to the airline company responsible by completing a Passenger Irregularity Report on the spot. Airline companies may refuse reimbursements when the Passenger Irregularity Report was not completed. In case of luggage damage, the Passenger Irregularity Report must be submitted within seven days of the incident and **in case of delayed luggage delivery, it must be submitted within 21 days of the luggage being delivered.** Moreover, the loss of, damage to, or misrouting of luggage must be reported to the tour guide or representative of **HHT**.

- 11.5. The customer must inform HHT when he/she does not receive the required travel documents (e.g. flight ticket, hotel vouchers) within the period notified to him/her by HHT or does not receive all documents.
- 11.6. In the event that vehicles are rented from HHT's respective partner company for a separate fee, the conclusion of a separate rental contract is required (see Section 14I). There is no right to a replacement vehicle in the event that damage occurs during the rental period.
- 11.7. The European Directive on Alternative Dispute Resolution (ADR) is seeking to ensure that consumers have access to out of court redress in every EU member state. It was implemented in German law by the „Verbraucherstreitbeilegungsgesetz“. The use of ADR is not obligatory and HHT does not use ADR. HHT will inform the customer if the use of ADR will be obligatory in future.  
For information about the newly established EU-wide Online Dispute Resolution platform (ODR) to facilitate the online resolution of contractual disputes between EU consumers and traders over purchases made online HHT provides the following link: <http://ec.europa.eu/consumers/odr/>

## 12. Limitation of Liability

- 12.1. The contractual liability of HHT for damage not resulting from fatal injury, bodily harm, or damage to health is limited to three times the travel price
- as far as the damage suffered by the customer was not caused willfully or through gross negligence, or
  - as far as HHT is responsible for a damage incurred to the customer solely due to the fault of a service provider.  
Any claims against airlines resp. contractually air carriers for arranged flights, made under the Montreal Convention or the Air Traffic Act in connection with the flight transport that may go above and beyond the above remain unaffected by this limitation of liability.
- 12.2. HHT shall not be held liable for of service disruptions, personal injury, and damage to property arising in relation to third-party service for which HHT is the brokering agent (e.g. excursions, sports events, theater visits, exhibitions, transportation services from and to the specified places of departure and destination), provided that said third-party services are expressly identified as such in the brochure and booking confirmation in such a clear and unequivocal manner that they are readily apparent to the customers/traveler as being separate and distinct from the travel services provided by HHT. In regards to arranged flights HHT refers to Section 1 of these terms and conditions.
- 12.3. As far as other transportation services as flight services are due by own contractual services, HHT is liable for services that include the transportation of customers/travelers from the specified place of departure to the specified destination of arrival, interim transport during the travel (without flights), and any kind of arranged service and insofar as the damage incurred to the customer/traveler was caused as a consequence of a breach of HHT's obligations to inform, advise, and organize. Any liability of HHT for breach of integral contractual duties remains unaffected by the regulations above.
- 12.4. HHT points to the customer that the general risk of accidents and injuries due to sports activities within a package tour remains with the customer and each customer is responsible for his/her own sporting capability. HHT therefore is not liable for damages due to the customer's sport activities, in case and insofar HHT cannot be accused of culpable violation of its obligations as a tour operator.

## 13. Time-limited Enforcement of Customer's Claims against HHT

- 13.1. Claims on account of the travel not being provided in accordance with the contract must be asserted by the customer within one month after the contractually agreed end of travel. The deadline commences on the day following the day of the contractually agreed end of travel. If the last day of this period falls on a Sunday, generally recognized public holiday at the place of declaration, or Saturday, the next working day shall be taken as the end of the period.
- 13.2. In order to be validly asserted within the above-stated period, claims must be lodged with HHT at the address indicated below.
- 13.3. After expiry of the period, the customer can only assert claims when he/she was prevented from observing the period without fault on his/her part.

## 14. Statute of Limitations

- 14.1. Claims of the customer under Sections 651c to f BGB from fatal injury, bodily harm, or damage to health caused by a willful or negligent breach of duty on the part of HHT or a legal representative or vicarious agent of HHT will become statute-barred after two years. This applies also to claims for compensation for other damage based on a willful or negligent breach of duty on the part of HHT or a legal representative or vicarious agent of HHT.
- 14.2. All other claims under Section §§ 651c – f become statute-barred after one year.
- 14.3. The limitation period according to Sections 14.1 and 14.2 commences on the day following the day of the contractually agreed end of travel. If the last day of this period falls on a Sunday, generally recognized public holiday at the place of declaration, or Saturday, the next working day shall be taken as the end of the period.
- 14.4. If negotiations between the customer and HHT on the claim or the circumstances giving rise to the claim are pending, the limitation period shall

be suspended until the customer or HHT refuses to continue the negotiations. Limitation takes effect not earlier than three months after the end of suspension.

## 15. Obligation of HHT to Inform about the Identity of the Operating Airline Company

- 15.1. In reference to Section 1 of these terms and conditions and in accordance with the EU regulation on informing air transport passengers of the identity of the operating air carrier, HHT in its position as an agent shall inform the customer of the identity of the airline company performing all of the air transport services to be rendered within the framework of the booked travel prior to or at the latest at the time of booking.
- 15.2. In case HHT is notified by the operating airline company/companies, in reference to arranged flights by HHT, of a change in the operating airline company/companies, HHT must inform the customer of the change without delay within its position as an agent.
- 15.3. In case of this change, HHT is entitled and obligated to refer the customer directly to the particular airline.
- 15.4. In case the customer has a termination or cancellation claim against the airline or any other contractual partner responsible for the flight service, the exercise of these claims has no impact on the travel contract concluded with HHT. In particular such termination or cancellation does not entitle the customer to cancel the travel contract with HHT free of charge, except HHT has violated its obligation of information.
- 15.5. The "blacklist" prepared according to EC Regulation (airline companies subject to an operating ban within the airspace of the member states) can be found on the website [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. HHT shall inform nationals of a country of the European Communities in which the travel is offered about the provisions of passport, visa and health regulations before concluding the contract and shall inform them about changes in such regulations, if any, before the start of travel. Nationals from other countries can obtain information from their respective consulate. In this case, it is assumed that the customer and any possible traveling companions do not involve any particularities (e.g. dual citizenship, statelessness).
- 16.2. The customer is responsible for obtaining and carrying the officially required travel documents, for receiving vaccinations that may be required, and for complying with customs and foreign exchange regulations. Any disadvantages that may result from a failure to observe such regulations, e.g. the payment of cancellation costs, shall be at the customer's expense. This shall not apply if HHT failed to inform or provided insufficient or wrong information.
- 16.3. If HHT was entrusted with the visa application, HHT shall not be responsible for ensuring that the visas required are issued and sent by the respective consular authorities in good time, unless HHT has negligently failed in its own duties.

## 17. Choice of Law and Place of Jurisdiction

- 17.1. For customers/travelers who are not nationals of a member state of the European Union or Swiss nationals, it is agreed that the entire legal and contractual relationship between the customer/traveler and HHT shall be exclusively governed by German law. Such customers/travelers can sue HHT exclusively at the place where HHT has its seat.
- 17.2. For actions brought by HHT against customers or contract partners of the travel contract who are registered merchants, legal entities under public or private law, or persons having their domicile or habitual place of residence abroad or whose domicile or habitual place of residence is not known at the time the lawsuit is brought to trial, it is agreed that the seat of HHT shall be the place of jurisdiction.

## 18. English Text serves only for Information

The English version of this text serves only for information and is not part of this legal transaction. Therefore, in the event of any inconsistency between the German and the English version, only the German version shall apply.

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