

Conditions for Reservations and Contracts for Guided Tours: City of Würzburg Congress • Tourismus • Würzburg (CTW) and Tour Guides Würzburg

Dear Guests,

The following terms of contract on the one hand regulate the legal relationship between Congress • Tourismus • Würzburg, a proprietary operation of the City of Würzburg and referred to in the following as “CTW”, and yourself, referred to in the following as “Customer” or, as applicable, with the person/institution booking the guided tour. On the other hand, they regulate the legal relationship between you and the tour guide arranged for by CTW. To the extent that they are effectively referred to and included therein, these Terms of Contract shall form integral content of the Contract of Service coming into force between yourself and the respective tour guide in the event of your booking. For these reasons you are kindly requested to carefully read through these terms and conditions.

1. Position of CTW

1.1. CTW offers both regular group tours available to the general public and non-regular private group tours (for individual groups).

a) In the case of regular group tours open to the public, CTW is the responsible provider of the tour guide services and is, therefore, the sole contractual partner of the booking guest or client of the tour guide.

b) In the case of non-regular private group tours (individual groups), CTW acts only as an intermediary between the tour guest or client and the tour guide.

1.2. To the extent that the following provisions of these General Terms and Conditions apply solely to the “tour guide”, without expressly differentiating in this respect between regular group tours open to the public on the one hand and non-regular private group tours (individual groups) on the other, these provisions,

a) therefore, relate, in the case of regular public group tours, to CTW as the provider responsible for performance and contractual partner of the booking guest or client of the tour guide service

b) in the case of non-regular private group tours (individual groups), to the tour guide as arranged by CTW in each case.

1.3. If, in addition to the tour guides, CTW arranges further services (either as a provider responsible for performance or as a tour guide agent), the following applies: CTW has the position of a provider of CTW's associated travel services to the extent that the conditions for travel services associated with an offer are fulfilled in accordance with the legal requirements of § 651w BGB (German Civil Code).

1.4. The following applies in the case of regular public group tours: Irrespective of the obligations of CTW as a provider of associated travel services (in particular, the transfer of the form required by law and execution of the protection of customer deposits in the event of collection by CTW) and the legal consequences of non-fulfilment of these legal obligations, CTW is not a tour operator, subject to any deviating express agreement in this regard.

1.5. The following applies in the case of non-regular private group tours (individual groups):

CTW is not a contractual partner in the contract that is concluded via the tour guide upon booking. In the case of such orders, CTW is, therefore, not liable for information about prices and services, the provision of the service itself or performance defects in connection with the tour guide. This does not apply to the extent that the tour guide is a contractually agreed service included in a package holiday or another offer where CTW is a direct contractual partner of the guest or client. Any liability of CTW arising from the agency contract and statutory provisions, in particular, in accordance with mandatory provisions regarding telemedia and electronic commerce, remain unaffected.

2. Status of the tour guide, applicable legal provisions

2.1. The legal relationship between the tour guide and Customer – or, as applicable, the party booking the guided tour – shall be primarily governed by the agreements concluded with the tour guide complementarily to these terms of contract and alternatively to the legal provisions set down in Article 611 et seq. of the German Civil Code relating to contracts for the provision of services.

2.2 Unless otherwise provided for under mandatory international or European law, the entire legal and contractual relationship with the tour guide and CTW shall be exclusively subject to the law of the Federal Republic of Germany.

3. Conclusion of contract, position of group client

3.1. By booking, which can take place in writing, by fax, email or on the internet, the guest or client bindingly offers

a) CTW as the provider responsible for performance, in the case of the following applies in the case of regular public group tours; b) the respective tour guide, in turn represented by CTW as a legal representative in the case of non-regular private group tours (individual groups), the conclusion of a service contract on the basis of the service description for the respective tour guide and these contractual terms and conditions.

3.2. If the booking is made by a third party referred to in these terms and conditions as a “corporate client”, i.e. an institution or company (private group, community college, school class, club, bus company, tour operator, incentive or event agency, travel agency), this client is

a) the contractual partner of CTW as the sole client within the scope of the service contract in the case of regular public group tours:

b) the contractual partner of CTW as the sole client within the scope of the agency contract or the tour guide within the scope of the service contract in the case of non-regular private group tours (individual groups), unless the corporate client acts as the legal representative of the future participant as expressly stipulated in the concluded agreement.

In such cases, the corporate client is fully liable for payment in connection with the agreed fee or any cancellation costs.

3.3. If it is expressly agreed that the corporate client is making the booking as a legal representative of the future participant, the latter is personally and directly responsible for all obligations of the future participant, to the extent that it has accepted these obligations in an express and separate statement.

3.4. The service contract regarding the tour guide is concluded upon confirmation, which CTW

a) shall submit in its own name in the case of regular public group tours:

b) shall submit as a representative of the tour guide in the case of non-regular private group tours (individual groups).

No specific form is required. As a rule, CTW will send the guest or client a written copy of the booking confirmation, except in the case of very short-term bookings. In the case of binding bookings made on the phone at very short notice, the legal effectiveness of the contract depends on the receipt of the written copy of the booking confirmation and any agreed advance payment.

3.5. The following applies in the case of bookings made on the internet with regard to the conclusion of contract:

a) The guest or client makes the tour guide a binding offer and simultaneously grants CTW the agency order by clicking the button “pay to book”

• in the case of regular public group tours by CTW as the provider responsible for performance of the tour guide services;

- the tour guide in the case of non-regular private group tours (individual groups).

b) The guest receives an immediate email confirmation from CTW that the booking has been received.

c) The transfer of the contractual offer by clicking on the “pay to book” button does not constitute a claim of the guest or the client for the conclusion of a service contract

- in the case of regular public group tours by CTW as the provider responsible for performance of the tour guide services. CTW is free to decide whether to accept the guest's or client's offer to conclude a contract;

- in the case of non-regular private group tours (individual groups) with the tour guide in accordance with the booking details. The person guiding the tour or CTW as their representative is in fact free to decide whether to accept the guest's or client's offer to conclude a contract.

d) The contract is concluded upon receipt of the booking confirmation by the guest or client, which CTW

- shall submit in its own name in the case of regular public group tours and

- as an intermediary and representative of the tour guide in the case of non-regular private group tours (individual groups).

3.6. CTW draws attention to the fact that, in accordance with the statutory provisions (§ 312g(2) 1 no. 9 BGB), in the case of contracts regarding guided tours as contracts for services in connection with recreational activities that are concluded via distance selling (letters, catalogues, telephone calls, faxes, emails, SMS, radio or telemedia), there is no right of revocation and only the statutory provisions regarding the non-utilisation of services (§§ 611 et seq., 615 BGB) apply (see also Clauses 6 and 7 of these General Terms and Conditions). However, there is a right of revocation if the contract is not concluded via distance selling but is concluded off-premises, unless the verbal negotiations forming the basis of the conclusion of contract were conducted in response to a previous order of the consumer; in the latter case, there is also no right of revocation.

4. Services to be performed, right of substitution

4.1. Services to be provided by the tour guide comprise performance of the guided tour in accordance with the specifications and any additional agreements.

4.2. Unless expressly agreed otherwise, the performance of the guided tour is not owed by a specific tour guide but instead by one selected by CTW on the basis of having the necessary qualifications.

4.3. Even if a specific tour guide has been personally named and booked, CTW reserves the right in the event of his justified inability to conduct the tour, (in particular due to illness) to substitute him with another suitably qualified tour guide.

4.4. The scope of duties owed shall derive from the specifications and any additional agreements. Any third-party information and warranties (especially from travel agencies, hotels, transport companies) on the scope of the contractual services in deviation from the specifications or the agreements made with CTW and/or with the tour guide shall not be binding upon CTW and the tour guide.

4.5. Any changes or amendments to the contractually offered services shall require an explicit agreement with CTW.

4.6. Changes to essential services in deviation from the agreed content of the contract that become necessary after the conclusion of the contract (especially also changes in the tour schedule) and were not brought about by the tour guide contrary to the principles of good faith shall be admissible to the extent that the changes are insignificant and do not relevantly impair the overall concept of the tour.

4.7. Details on tour duration are of an approximate nature.

5. Prices and payment

5.1. Agreed prices include the performance of the guided tour and additionally offered or agreed services.

5.2. Admission fees, catering expenses, as well as costs on public and private transport, city maps, leaflets, museum guides, tour costs within the framework of the visited sights included in the guided tours are only included in the agreed price if these are specifically listed as guided tour services or additionally agreed.

5.3. The following applies in the case of regular public group tours:

a) Unless expressly agreed otherwise, the agreed fee is due for payment immediately after receipt of the booking confirmation in accordance with Clause 3.

b) If the guest does not pay the fee in accordance with the agreed payment deadlines, although CTW is prepared and able to provide the contractually agreed tour guide services and the guest has no statutory or contractual right of set-off or retention, and if the guest is responsible for the payment delay, CTW is entitled to withdraw from the guest tour guide contract following a warning with a deadline and after the expiry of this deadline and may charge the guest any withdrawal costs in accordance with Clauses 6 and 7.

5.4. The following applies in the case of non-regular private group tours (individual groups):

a) At the beginning and/or end of the tour guide services outside of Würzburg inner city, the tour guide is entitled to claim reimbursement of travel costs and a fee to cover additional time.

b) Unless agreed otherwise, in particular, with regard to a down payment or full advance payment, the agreed fee is due for payment at the start of the tour. Cheques and credit cards are not accepted. If agreed with the tour guide, payment may be made against invoice. In this case, the invoice amount is due for payment immediately and without deduction and is to be paid to the tour guide.

c) If the tour guide is prepared and able to provide the agreed services and the guest or client has no statutory or contractual right of set-off or retention, they are not be entitled to claim the agreed services without full payment before the beginning of the tour.

d) The tour guide's fee may include VAT if the tour guide is required to pay tax. Tour guides are usually small businesses and exempt from VAT (§ 19 BGB).

e) The maximum number of participants per tour guide in the case of journeys, e.g. to the Franconian wine country or along the Romantic Road is 50 people, while for city tours (including combined bus round trips/foot tours) the maximum number is 30 people. The participant number is 50 people for city tours.

f) Unless expressly agreed otherwise, if the number of participants on a tour exceeds an agreed number or the ratio of 30 people per tour guide, the tour guide is entitled to seek the assistance of an additional tour guide.

Irrespective of the extent by which the agreed number of participants is exceeded, such further tour guide shall be entitled to full remuneration in accordance with the respectively valid rate. The original and additional tour guide are entitled to, in their sole discretion, decide how the group shall be divided between them.

In the event that, upon commencement of the guided tour, the agreed number of participants is exceeded and an additional guide is not available, the original tour guide shall be entitled to a remuneration of twice the amount of the respectively valid rate.

g) In the event that, prior to commencement of the guided tour, it becomes apparent that the agreed number of participants is exceeded and an additional guide is not available, the original tour guide shall be entitled to a remuneration of one and a half the amount of the respectively valid rate.

6. Failure to use ordered services

6.1. There shall be no entitlement to any reimbursement of payments which have already been made if the Customer or the booking party does not use the agreed services either in whole or in part for reasons for which the tour guide or CTW cannot be held responsible and even though the tour guide is ready and able to provide the services.

6.2. The agreed remuneration shall be subject to the corresponding statutory regulations (§ 615 paragraphs 1 and 2 of the German Civil Code BGB):

- a) The agreed remuneration is to be paid without entitlement to any Annex 1 subsequent performance of the guided tour at a later point in time.
- b) The tour guide shall, however, allow any expenses not incurred as result of said failure to take part in the guided tour to be deducted from the remuneration as well as any remuneration he obtains or maliciously refrains from obtaining through placement elsewhere of agreed services.

7. Cancellation, withdrawal and change of booking by the Customer or booking party

7.1. The guest or the client may cancel the order up to and including the fourth working day (Monday to Friday) before the agreed date free of charge. Cancellation is possible by fax (+49 (0)9 31/37 36 52) or email (service@wuerzburg.de) during the business hours of the CTW main office (Monday to Thursday 8:30h to 17:00h, Friday 8:30h to 13:00h). It must be confirmed in writing or text form (fax or email).

7.2. The following applies in the event of cancellation at a later date by the guest or client:

- a) Reference is made to the provisions of Clause 6.2 for regular public group tour bookings. A cancellation booking amounting to the full agreed fee is usually charged in such cases, less any saved included fees in accordance with Clause 5.2. No further deductions are usually made as a result of use of the agreed guide services by other individuals due to the fact that these are public tour guide services.
- b) Reference is also made to the provisions of Clause 6.2 for non-regular private group tours (individual groups). A cancellation booking amounting to the agreed fee is usually charged following deduction of any saved included fees in accordance with Clause 5.2. Any further deductions are usually only made as a result of use of the agreed guide services by other individuals if the specifically agreed tour guide services are able to be used for another purpose.
- c) In this case, the tour guide must directly invoice the guest or corporate client for the cancellation fee.

7.3. If applicable, the Customer or booking party shall have entitlement to furnish proof that the tour guide has suffered no loss or that the loss sustained is less than the invoiced amount.

7.4. Changes of booking (change of date, time, tour route/schedule and of any essential services and modalities involved in the guided tour) may be made, free of charge, up to the fourth working day before the agreed date of performance, after which it will only be possible to make changes by cancelling the booking in accordance with the above conditions and subsequently making a new booking. Such changes shall not be considered valid until confirmed in writing by CTW.

8. Liability of CTW and the tour guide

8.1. Reference is made to Clauses 1.3 and 1.5 of these terms and conditions with regard to the liability of CTW as a private group tour intermediary.

8.2. To the extent that CTW acts as a provider responsible for performance of regular public group tours, the liability of the tour

guide and CTW is excluded for damages that are not caused by the violation of a material obligation, the fulfilment of which makes the proper execution of the tour guide contract possible, or the violation of which jeopardises the achievement of the purpose of the contract or results from the injury to the life, body or health of the guest, to the extent that the damages were not caused by the tour guide, its legal representatives or vicarious agents, either intentionally or as a result of gross negligence.

8.3. The tour guide or CTW as the provider responsible for performance of regular public group tours is not liable for the services, measures or omissions of catering establishments, institutions, sightseeing venues or any other services visited within the context of the tour, unless the damage is caused by or partially caused by a culpable breach of duty on the part of the tour guide or of CTW.

9. Tour times

9.1. The following applies in the case of regular public group tours: Agreed tour times must be adhered to punctually. If the guest is late without this being the fault of the tour guide or CTW, the tour guide service is deemed to have started at the agreed beginning of the service with no further waiting, in consideration of the other tour participants. The guest or client is not entitled to a discount due to partial non-fulfilment in this case.

9.2 The following applies in the case of non-regular private group tours (individual groups):

- a) When making the booking or in a timely manner before the agreed tour date, the guest or corporate client will be asked to provide a mobile phone number so that they can be contacted in the event of extraordinary circumstances. CTW usually also provides the guest or a nominated individual with the corresponding mobile phone number of the tour guide providing the tour.
- b) Agreed tour times shall be strictly adhered to. If subject to any delay, the Customer shall accordingly notify the tour guide at latest by the agreed time of the guided tour's commencement and indicate the probable time of arrival. The tour guide may refuse to postpone the tour's time of commencement if such postponement is objectively impossible or unreasonable, in particular if subsequent tours or other compelling business or private appointments of the tour guide cannot be kept as a result. Generally speaking, any postponements over 30 minutes shall entitle the tour guide to cancel the tour. The tour guide's entitlement to payment shall remain, and the provision set down in Section 6 shall apply correspondingly. In such case the tour guide will invoice the Customer or booking party directly.

9.3 If the tour begins late due to circumstances that are not the fault of

- a) either the tour guide
- b) or CTW as the provider responsible for performance of regular public group tours,
- c) and which are also not the fault of CTW within the scope of the arrangement of non-regular private tour guides due to a violation of the intermediary obligations, there is generally no entitlement to claim an extension of the tour time. This does not affect any claims of the guest due to partial non-fulfilment of the tour guide services, to the extent that the guest or client of the corporate client is not to blame for the delay.

In the event that a group arrives late for a guided tour, the tour guide and the guest or group's representative shall agree whether the guided tour shall be accordingly abbreviated or whether – provided the tour guide is available and has no other obligations – the guided tour service shall be provided in the full, originally agreed length. In such case, the tour guide's remuneration shall be calculated on the basis of the period of time resulting from the waiting time due to the delay plus the full length of the guided tour.

10. Obligation of the guest

10.1 Guests or group representatives shall be obliged to immediately report any service deficiencies of the guided tour or agreed services to the tour guide and demand remedy of same. Any guest claims possibly resulting from deficient or non- or partially fulfilled services will be rejected if they have not been accordingly reported, unless the guest/group representative is not responsible for such failure to report due to a negligence on his/her part.

10.2 Guests/group representatives shall only be entitled to cancel or abandon guided tour services if the service of the tour guide is materially deficient and if such deficiencies, following their respectively due report are not remedied. In the event of any unjustified cancellation or abandonment of services the right to reimbursement of service rates paid shall be excluded.

10.3 Combined bus and walking tours, city tours by bus and bus travel services may only be provided in busses with functioning microphone systems and guide seats. Otherwise, the tour guide shall be entitled to reject provision of the guided tour services while his/her right to remuneration shall remain unaffected (the provisions of section 6.2 shall apply accordingly).

11. Insurances

11.1. Contractually agreed services shall only include insurance cover in favour of the Customer or booking party if specifically agreed accordingly.

11.2. The Customer or booking party is strongly advised to take out a travel cancellation insurance policy.

12. Accessibility of local sights and the special regulations relating there to

12.1. CTW has no influence on the admission times of local sights, for which reason the time quoted in CTW's confirmation of order applies solely to the start of the tour and does NOT serve as guarantee of admission to a sight at that point.

12.2. Furthermore, CTW has no influence on the general accessibility on Sundays and public holidays of museums and public buildings, in particular churches (which might be closed for tours because of, for example, services, special events, etc.).

12.3. Würzburg's castle and garden management have established the following regulation in order to ensure smooth running tours of the Residence UNESCO World Heritage site: Groups consisting of less than 30 people may be "topped up" with other individual visitors even if a group has booked its own tour guide. There might be some admission waiting times in peak periods and during the guided tour.

13. Statute of limitation and alternative settlement of disputes

13.1. With respect to the newly introduced legislation regulating the settlement of consumer disputes (Gesetz über Verbraucherstreitbeilegung), CTW duly informs the client herewith that it currently does not participate in any such voluntary settlement programme, unless specified otherwise within print or online advertisements published by the tour guides. In the event that the participation in such a programme became obligatory in the further course after printing and publishing these terms and conditions, CTW will duly inform its clients accordingly. In relation to all contractual relationships concluded electronically, CTW makes reference herewith to the European dispute settlement platform <http://ec.europa.eu/consumers/odr>.

13.2. Contractual claims on the part of the Customer/booking party against the tour guide or CTW arising from injury to life, limb or health, including contractual claims for compensation, that are based on said parties' negligent breach of duty or a deliberate or negligent breach of obligation on the part of their legal representatives or vicarious agents shall lapse after three years.

This shall also apply to compensation claims for other damages that are based upon a grossly negligent breach of duty on the part of the tour guide and/or of CTW or based on a deliberate or grossly negligent breach of duty by their legal representatives or vicarious agents.

13.3. All other contractual claims shall lapse after one year.

13.4. The period of limitation as per the above provisions shall in each case begin as from the end of the year in which the claim arose and in which the Customer/booking party became aware of the circumstances upon which the claim is based and in which the tour guide and/or CTW as liable parties became aware or, without gross negligence on their part, had to become aware of said circumstances.

13.5. If negotiations are in progress between the Customer and the tour guide and/or CTW in respect of the claims lodged or the circumstances upon which the claim is based, the period of limitation shall be suspended until such time as the Customer or the tour guide and/or CTW refuses to continue with the negotiations. The afore mentioned period of limitation of one year shall become effective three months after such suspension at the earliest.

14. Information about data processing

We use the data provided by you to confirm and process your booking as and to send you information and offers. For more information about the processing and storage and your rights as a data subject (in particular the right to obtain information and object) in our Data Protection Notice, which is available at all times at <https://www.wuerzburg.de/infos/datenschutzerklaerung> and at our office and which we would be happy to send to you.

15. Applicable law, place of jurisdiction

15.1. The entire contractual and legal relationship between CTW and the Customer or booking party as well as between the tour guide and the Customer is governed exclusively by the law of the Federal Republic of Germany.

15.2. Insofar as complete on-site payment to the tour guide is agreed, the place of performance and the place of jurisdiction shall be the place where the tour is carried out.

15.3. The Customer or booking party may only file a legal action against the tour guide or CTW at their general place of jurisdiction.

15.4. Unless the place of jurisdiction for the place of performance is justified, the authoritative place for legal action on the part of the tour guide and/or CTW against the Customer or booking party shall be the latter's general place of jurisdiction. If the booking party is a merchant within the meaning of the German Commercial Code or a public or private law legal entity, or if the Customer or booking party has no general place of jurisdiction in Germany, the exclusive place of jurisdiction for any claims of the tour guide or CTW shall be their place of residence or their principal place of business.

15.5. The above provisions on applicable law and the place of jurisdiction shall not apply if determined otherwise in favour of the Customer or booking party by EU regulations applicable to the contract with the tour guide.

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The intermediary and provider of guest tour guides in accordance with the above-mentioned contractual terms and conditions is:

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A proprietary operation of the City of Würzburg

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