

# Vendor Terms of TripUp GmbH, Hamburg

Version 1 June 2017

Note: This English copy of the “Anbieterbedingungen der TripUp GmbH, Hamburg” has been developed solely for the convenience of our partners. We have conducted the translation to the best of our knowledge and applying due diligence. Should there be (significant) inconsistencies between the German and the English version, the German version is considered legally binding.

## 1. Introduction

TripUp GmbH, Hamburg (hereinafter "**TripUp**" or "**we**" and including all of its affiliates, subsidiaries, officers, and employees) operates the internet booking platform [www.meine-landausfluege.de](http://www.meine-landausfluege.de) and all related internet domains and -presences (the "Platform").

The platform enables sellers (hereinafter "**seller**", the "**provider**" or "**he**") to sell shore excursions to end consumers (hereinafter "**customers**"), tailored to the needs of cruise passengers (hereinafter "**services**").

The platform includes all site(s), apps, tools, platforms and / or other entities of TripUp and its affiliates, on which or through which the service is marketed to customers.

TripUp only provides the platform to enable the providers to directly offer their services to customers and sign contracts. TripUp acts as the authorized and commissioned commercial agent of the provider and will at no time be a provider itself.

## 2. Scope of the conditions

These conditions (hereinafter the "**conditions**" or "**agreement**") apply to all providers that offer their services via the platform and only to the relationship between the seller and TripUp.

The relationship between the customer and the provider is not subject to these conditions, but only the subject of individual contracts concluded between these parties.

In addition, the general terms and conditions of the provider of cruise trips and other tourist services (“Allgemeine Geschäftsbedingungen der Anbieter von Kreuzfahrtausflügen und anderen touristischen Dienstleistungen”) apply to the relationship between the provider and the customer.

The relationship between TripUp and the customer is under the subject of the general terms and conditions of TripUp GmbH, Hamburg (“Allgemeine Geschäftsbedingungen der TripUp GmbH, Hamburg”).

All mentioned documents can be found on the website [www.meine-landausfluege.de](http://www.meine-landausfluege.de) in the current version. Only the respective current version shall be considered the valid one.

### **3. Offered Services by TripUp**

The platform allows providers to offer their services directly to the customers and conclude contracts with them. The provider instructs TripUp as commercial agent and empowers us to handle the initiation and the conclusion of the booking in relation to the service directly between the seller and the customer of the platform, and TripUp takes this job to the conditions set out below.

In addition, the provider authorizes TripUp and the corresponding payment service and / or any third party authorized by TripUp, to conclude the cash-collection for booked services.

TripUp supports the conclusion of contracts between customers and providers via the platform. TripUp advertises the service of the providers and encourages the customers in general to give orders.

### **4. Obligations of the provider**

The provider guarantees that all information transmitted to TripUp are always correct, true and not misleading in connection with its offer. These include in particular the excursion description, information about the meeting point between provider and customer, excursion sizes (min. and max. number of participants), the difficulty level, the necessary equipment etc. The provider transmits this information in German language to TripUp (either via email or web-upload). If the provider cannot provide information in German language, he must submit an English version. Other languages are not permitted. TripUp will undertake the translation into German and provide the seller on request a German version for review purposes.

The provider is obliged to verify in a timely manner that content uploaded to the platform about its offerings is correct, so that the accuracy of the information is ensured. The provider may be held liable for all claims of the customer, based on inaccuracies uploaded and displayed on the platform if these inaccuracies have been originally provided to TripUp. Once the seller detects an inaccuracy in the uploaded information, he shall inform TripUp immediately.

The provider guarantees that the benefits are provided exclusively in accordance with all applicable laws, in particular in accordance with the laws of the country where the legal seat of the provider is established, and in accordance with all applicable laws of the country in which the services are executed, and that the provision of the services does not violate any rights of third parties. In particular, the seller guarantees that he (a) complies with all consumer protection and other intellectual property rights, information and consulting services and regulations, and (b) possesses all administrative and

other permits and licenses as well as insurance and similar features that are required in the legal system of the country in which the services are executed.

The provider is obliged to make available all respective evidence and documents on request by TripUp. In the event that the services provided do not comply with the standards referred to above, or in case such a suspicion exists, the seller is obliged to cooperate immediately at his own expense with the administrative authorities or competition / consumer protection associations.

The seller guarantees that all agents (e.g. tour guides) employed or mandated by him are in possession of all necessary approvals and comply with all legal requirements, including professional qualifications and authorizations. The provider is fully responsible for the behavior of his agents to the customers.

The provider is generally only entitled to offer his own services on the platform. If the seller acts as an intermediary or broker of services, he is treated as a party and may be held liable for any damages and claims. The provider must be able to perform the services offered. He is not allowed to offer fake services on the platform.

The provider is obliged to conclude comprehensive general liability insurances for all services offered via the platform. The provider must necessarily have a sum insured that is appropriate for the specified booking volumes and risks. Moreover, the general liability insurance has to cover potential claims for compensation from TripUp. TripUp reserves the right to review the policy on demand and to require proof of payment of the insurance premium.

The provider is obliged to grant a so-called "back-to-ship-on-time" guarantee. This means that the seller has to take precautions to ensure that customers are brought back to the cruise ship or to the contractually agreed place in time, regardless of all and any disruptions in the chain of services booked. In case of a delay in the services and in case the provider cannot make sure that the customers are brought back to their cruise ship or to the place contractually agreed in time for reasons the supplier is accountable for (that includes negligence but excludes "force majeure"), the provider has to cover all costs resulting from this delay. This includes the costs for the subsequent transport to the nearest port on the route of the cruise ship, accommodation and meals, any costs for clothing and other costs incurred by the customer resulting directly from missing the departure of their cruise ship. The supplier is also responsible for organizing the subsequent transport and any hotel stays required.

The provider is required to validate the customer receipts. This means in particular to check the respective customer receipts at the beginning of the service ( "Voucher" or e-mail confirmation) and compare these with their own reservation lists. If customers appear to the service, which are not included in the reservation lists of the provider, he shall directly liaise with

the respective contact person at TripUp. In case the issue cannot be clarified immediately, the provider has to carry out the service to the customers in question, provided sufficient capacities exist. TripUp will refund the seller the corresponding costs.

Should a customer not appear at the agreed time and meeting place, the provider must first attempt to reach the customer on the phone. Does the provider have no (mobile) phone number of the customer in question or cannot reach the customer, he must hold immediate consultation with the relevant contact person at TripUp. Only if immediate clarification cannot be brought about either by the customer or with TripUp, the provider is entitled to perform the service without participation of the client concerned.

## **5. Booking procedures**

All visitors of the platform are allowed to research all services offered without prior registration. If the visitor is interested in a specific service, he shall make a reservation, and the provider is properly informed of the relevant requested service. The seller will receive the booking request of the customer via email.

## **6. Displayed content & Intellectual Property**

The provider grants TripUp a non-exclusive, royalty-free and worldwide right, which entitles us to use the provided content. Use in this context means to reproduce, process, distribute, sublicense, and publish the content.

TripUp is not liable to the provider in any way for any acts or omissions of third-party sites. The sole remedy of the provider with respect to such third-party platforms is (a) is to require TripUp (wherein TripUp entitled to do so, but is not obligated) to disable or interrupt the connection to the relevant third-party platform, or (b) the termination of this agreement, both of which must be made in accordance with these conditions.

The provider is liable for all claims of third parties with respect to the violation of the copyright to the content that he has made available to TripUp.

## **7. (Online-)Marketing**

TripUp generally performs all (online-)marketing campaigns at its own expense and in its sole discretion.

TripUp is entitled to promote the services of the provider using the / name (s) of the provider via online marketing including email marketing and / or pay-per-click (PPC) advertising.

It is at the sole discretion of TripUp how the services of the provider are advertised on the platform or on the websites of third parties and in-line inter-network; this refers amongst others to the ranking and the promotions of the services when compared against other offerings and services.

The provider is aware of the technology of search engines (e.g. “spidering” of content and URL rankings). If the provider becomes aware of conduct on third-party platforms that violates the rights of intellectual property of the provider, he will inform TripUp in writing of the details of the behavior. TripUp will ensure to commercially viable extent that the third party concerned shall take the necessary steps to remedy the breach property rights of the provider.

## **8. Cancellations**

All cancellations done by customers must be made through the platform or by e-mail to TripUp.

The provider is aware and agrees that the customers are entitled to cancel their bookings

- until 29 days before the date of service: free of charge
- 28 to 15 days prior to the date of service: 50% free of charge
- beginning with the 14<sup>th</sup> day prior to the date of service: full charge

The provider accepts that, depending on the above-mentioned proportionate cancellation fees, he will only receive the proportionate share of the underlying purchase prices from TripUp.

## **9. Extraordinary cancellations**

The provider and TripUp may cancel services due to “force majeure” without observing a cancellation period. “Force majeure” in this context may mean extraordinarily severe weather conditions, a strike, government action, and all other unforeseeable or unavoidable external circumstances that make it impossible, extremely difficult or dangerous to carry out the service.

This is also valid for route changes of cruise ships on short notice, particularly port omissions and (significantly) shortened berthing times, as a result of which the service cannot be performed.

In this case, the provider is obliged to refund payments already received to TripUp. This is done to the exclusion of any liability or other claims on what legal basis whatsoever.

## **10. Minimum number of participants**

If a minimum number of participants as indicated in the service description is not met, we and/or the provider will have the right to cancel the service no later than on the 14th day before the performance date.

The provider acknowledges that such timely cancellations made by TripUp result in no payments claims whatsoever for him.

## **11. Customer complaints**

The provider will handle complaints or claims regarding the services or specific issues raised by the customer related to the services. TripUp is entitled at any

time and in its sole discretion to (a) offer support services to a customer or (b) act as an intermediary between the provider and the customer, or (c) support the customer otherwise in their communications with or the assertion of claims against the provider.

## **12. Cash settlement between TripUp and the providers**

TripUp is negotiating purchase prices for services with the providers and, in turn, offers these services to customers at retail prices. In this way the commission is earned. The determination of the retail price lies in the discretion of TripUp, and TripUp is thus free to reduce the retail prices or the commission to increase occupancy and consequently reduce average purchase prices of certain services.

The billing to the provider is done on a case-by-case basis of respective booked quantities and purchase prices. 14 days prior to the excursion date TripUp will determine whether the excursion will take place or not. In case the excursion will take place, TripUp will transfer the respective monetary amount promptly to a bank account of the suppliers choice. The supplier will issue a formal invoice for the service to TripUp. Any taxes and other costs that are borne by the provider will not be replaced separately.

Payments by TripUp made to the provider are processed via bank transfer to the specified account from the manufacturer. Direct debit transactions from the provider to TripUp are not possible.

TripUp processes all payments from the customers via a payment service provider. If customers cancel their payment before the booked service is executed, or payment is not processed for any other reason, TripUp will inform the provider immediately. In this case the customer does not have any claim to participate in the services, and the provider is responsible for not letting him, should the customer still want to participate in the service. The cancellation procedures according to Section 7 shall apply notwithstanding. Should TripUp however not be able to (pro rata) cash-in the customer payments, no (pro rata) claim from the provider can be made against TripUp.

TripUp is not obliged to take legal actions, of whatever kind, against customers who do not pay or cancel a specific service or revoke their payment.

Credit card and bank charges for customer payments to TripUp are borne by TripUp. Credit card and bank charges for transfers to the seller shall be divided as follows:

- TripUp will bear the costs of its own bank / its own credit card company
- The supplier shall bear the costs of his bank / his credit card company

## **13. Customer ratings**

After execution of a service, customers have the opportunity to evaluate the booked services using the evaluation system of TripUp. The aim of the evaluation system is to create meaningful and accurate feedback and profiles of

providers in terms of their performance, their reliability and their seriousness. These profiles of the services (not of the providers) are public and can be viewed by each visitor on the platform. All content provided in this evaluation system is the property of TripUp. The provider is not allowed to publish assessments without the prior written consent of TripUp on his own website / third-party websites.

#### **14. Data privacy protection**

The provider confirms that he has reasonable security procedures and controls installed and maintained, and that he will establish and maintain this in order to prevent the inadvertent disclosure of and unauthorized access to, or the unlawful use of personal data or information from customers.

Neither the provider nor its affiliates participate directly or indirectly in marketing or promotional activities to customers, or similar messages to customers who have booked with them through the platform.

The provider is obliged to treat all customer-related information (e.g. email data or phone numbers) in accordance with the EU data protection directive (and all adopted within the framework of laws) in their amended, updated, replaced or expanded form. At the request of TripUp the provider is obliged to prove that he has installed and maintained adequate technical and organizational security measures governing the processing of personal data.

#### **15. Warranties**

In addition to any other representations and warranties of the provider in these conditions he ensures that (a) he has authorized the person signing this agreement to act on his behalf, (b) this contract represents a valid and binding obligation against him in accordance with his provisions and can be enforced against him, (c) fulfilling his obligations under these conditions is not against agreements or obligations between him and a third party, (d) he owns all rights, licenses, permits and authorizations needed to offer the services and comply with his obligations under these terms (or that the owner of such rights has given his consent).

#### **16. Liability of the provider and exemption**

The provider agrees to hold TripUp, each of its affiliates and any officers, directors, employees and agents of TripUp or its affiliates harmless with respect to claims, actions, damages, costs or other liabilities, consisting of, or in connection with (a) the service of the provider, (b) the performance of duties and obligations under these conditions, or (c) the allegation that the permitted use, reproduction, distribution or mapping of information about the service by TripUp or one of its affiliated companies are a breach to the intellectual property rights of third party individuals or that are illegally used. As such, the provider will mandate a lawyer accepted by TripUp to defend against claims for damages, and TripUp is entitled to participate at any time, with selected lawyers in the defense or settlement of claims. Furthermore, the supplier agrees, not to approve any settlement or any judicial decision without the prior written consent of TripUp, which may not be refused without good reason.

#### **17. Limitation of liability of TripUp**

TripUp makes no warranties and bears no guarantees with respect to the platform, such as a temporary or permanent interruption of the operation of the platform.

TripUp bears no risk in terms of number, frequency or type of service bookings on the platform.

The liability of TripUp under the conditions is limited to the correct transmission of data indicated by the customer when booking a service on the platform.

TripUp is liable for data loss only up to the amount of typical restoration costs that would be incurred if properly and regularly backup measures had been taken.

A greater possible liability for TripUp is excluded.

### **18. Duration and termination of contracts**

Contracts under these conditions are closed with unlimited duration.

The provider and TripUp are entitled to terminate contracts under these conditions at any time without giving reasons. Here, a notice period of three months is considered and contracts terminate at the end of the calendar year. Confirmed bookings must be serviced as scheduled by the provider.

An extraordinary termination on serious grounds remains unaffected.

### **19. Amendments**

TripUp reserves the right to change the provisions of these terms at any time and introduce new or additional provisions. TripUp will inform the provider with a message via e-mail of any changes to these conditions.

If the service provider does not accept such amendments he is entitled to cancel his contract with TripUp and announce this fact in writing. If the provider does not make use of such right within thirty (30) days of notification of a change or new or additional provisions of these terms, this means that he has accepted the amendments in question.

### **20. Final provision**

Subsidiary agreements have not been made. All changes and additions to this contract must be in writing, in order to be legally effective.

Credits and receivables of the supplier resulting from this contract may not be assigned or transferred to third parties without the prior written consent of TripUp.

These conditions and all claims arising from or in connection with contracts based on these conditions are subject to German law excluding the rules of private international law and must be interpreted in accordance with this law. Place of performance and the exclusive venue for any disputes arising out of or in connection with the services is Hamburg, Germany.

Should one of the above provisions be legally invalid, a legally valid version shall take its place which corresponds to the purpose of the provision in question to the best extent possible. All other provisions shall remain valid independent of it.

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