

Sinclair's Africa is a trademark KM individual GmbH (tour operator)

General Travel Conditions of KM individual GmbH
Status 01.06.2013

Travel conditions

Dear Client,

The travel conditions of KM individual GmbH (hereinafter: KM individual) supplement and complete paragraphs §§ 651 a et seq. BGB and regulate the legal relationships between you and KM individual. Deviations in the respective tour planner take priority.

1. Procurement of third party services

If KM individual arranges programmes of explicitly on behalf of other operators or individual services, e.g. flights, hotel rooms, car hire, etc., KM individual is only liable for acting properly as an agent, not for the service itself. The conclusion of the agreement and its contents are based on the relevant statutory terms and the terms of the respective contractual party if need be. KM individual is not liable for impairments of performance, which you have had arranged at the destination by travel guides, agencies, hotels, etc.

2. Data protection / responsible air carrier

a) The personal data, which KM individual obtains from you, is electronically processed and used, as long as it is required to fulfil the agreement. KM individual may inform you of current offers beyond that, as long as KM individual is unaware that you do not wish to receive them. If you do not agree to have information sent to you, KM individual requests your advice accordingly.

b) EU Regulation No. 2111 of 14.12.05 obliges tour operators, travel agencies and contract of transport agents to inform passengers before their flights of the identity of each airline carrier, as soon as it is determined. If this is not the case at the time of booking, initially the likely airline carrier must be identified. If the airline carrier changes after the booking, KM individual will notify you accordingly.

3. Travel booking / conclusion of agreement

a) With your travel reservation you propose to conclude a binding travel agreement with KM individual based on these terms of business. The travel agreement only comes into effect when KM individual sends you an appropriate travel confirmation/invoice. You are bound to your travel reservation until it is accepted by KM individual, but no later than 14 days from receipt of the reservation.

b) In the case of a reservation for several passengers you are liable as well as these passengers for their contractual obligations as long as you have accepted this obligation via an explicit and separate statement.

If the contents of the travel confirmation/invoice deviate from the contents of the reservation, this then becomes a new quote, to which KM individual is committed for 10 days. The agreement comes into effect based on this new quote if you declare your acceptance to KM individual within this period, which may also occur by paying a deposit or the full cost of travel. If no declaration of acceptance or unconditional payment is made, a travel agreement does not come into effect between you and KM individual.

4. Change in service

Changes and deviations in individual travel services from what is settled in the travel agreement, which become necessary after the agreement is concluded and which are brought about by KM individual in good faith are permitted as long as the change or deviation is not significant and does not impair the overall character of the booked tour. This applies especially to changes in hotels and restaurants, which are described in the travel programme. As the quality of these service providers is constantly monitored, changes at short notice are possible.

With concerts, operatic, theatrical and musical events or similar the programme and redeployments (particularly different conductors or soloists) are subject to change and do not justify any claim for return or exchange of admission tickets. Admission tickets for concerts, operatic, theatrical and musical events or similar must be paid in full, if KM individual cannot otherwise sell them.

KM individual is allowed to make reasonable, minor changes to the type of transport, airlines, flight routes and flight times. KM individual is obliged to inform you of significant changes in services without delay on being notified of them. KM individual will offer to rebook or cancel free of charge.

Any arrangements to change or add to these services and travel conditions require an agreement in writing with KM individual.

5. Prices subject to change

a) KM individual is entitled to increase the travel price, if after concluding the agreement the price components specified below are increased or newly originate based on circumstances that KM individual could not predict and for which KM individual is not responsible:

Foreign exchange for booked travel; transportation costs (in particular in the event of an oil price increase); port or airport fees; security charges in connection with transportation; VAT increase; immigration, tourist and government entry fees. However, the price increase is only permitted if more than four months lie between the conclusion of the agreement and commencement of travel.

b) The travel price may only be increased by the amount that equals the sum of all the increases of price components for the travel booked given in section 5.a incurred after conclusion of the agreement. As far as relevant cost increases apply to a travel group in its entirety, they are divided up initially among individual passengers. Depending on which is more favourable to you, the originally quoted average number of passengers or the actual number of passengers expected is used as the calculation basis.

c) KM individual must notify you of any price increase without delay, no later than 22 days before commencement of travel.

d) If the travel cost increases by more than 5%, you are entitled to cancel without paying compensation. You may instead demand another travel arrangement of at least equal value from KM individual's programme, if KM individual can provide it without additional charge. You should assert your rights vis-à-vis KM individual

as soon as any price increase or change in travel provided is announced.

6. Payment of travel / deposit

a) In accordance with § 651 k para. 3 BGB you are only obliged to pay on delivery of the chattel paper. You will receive this no later than when the initial deposit is paid.

b) When the agreement is concluded please pay the deposit stated for the respective tour, which is 20% of the travel price. KM individual must receive the balance 40 days before travel commences. If the agreement is concluded after the 40th day before travel commences, the entire travel price is due immediately on receipt of the chattel paper.

c) If the travel price has not been paid in full by 21 working days before travel commences, KM individual is entitled to specify a grace period with a threat to deny service, cancel the contract and demand compensation, if payment is not made within the specified term. The compensation claim amount is based on the flat-rate compensation sums under figure 8.

d) Travel documents are generally delivered only after the travel price is paid in full.

e) Cancellation compensation, processing, rebooking and withdrawal fees plus insurance premiums are immediately due respectively. KM individual recommends taking out travel cancellation insurance.

7. Cancellation by KM individual

KM individual may cancel the travel agreement in the following cases before travel commences or give notice to cancel it after travel commences:

a) If a minimum number of passengers is specified in the travel contract, KM individual may withdraw from the contract up to 29 days before travel commences, if the minimum number is not achieved. You will be notified immediately of the reason for cancelling the tour and will receive a refund of any deposit paid.

b) KM individual may withdraw from the travel agreement, if having exhausted all its options up to 29 days before travel commences, it is unreasonable for KM individual to conduct the tour because if it goes ahead, the costs related to the tour will exceed the acceptable financial limit. However, KM individual only has the right to cancel, if KM individual is not responsible for the circumstances that led to it, evidence exists for the circumstances that led to the withdrawal and a comparable substitute offer is made to you. If the tour is cancelled for such a reason, your deposit will be refunded.

c) KM individual may cancel without giving notice, if you act contrary to contract to such a degree that the immediate annulment of the agreement is justified. Should KM individual cancel, KM individual still retains the right to the travel price. However, KM individual must allow for the value of the expenses saved and the benefits that KM individual obtains from otherwise using the services that were not drawn on, including the sums credited by its service providers.

8. Cancellation by the client before commencement of travel

Before travel commences you may withdraw from the travel agreement with notice in writing to KM individual. The significant factor in calculating all the terms is the date on which KM individual receives the notice in each case. In the event of your withdrawal from the travel agreement before commencing travel (cancellation) KM individual may as it chooses claim a fixed amount of cancellation compensation calculated in accordance with § 651 i para. 2 BGB or the following flat-rate compensation:

Up to 31st day before travel commences 15%

Then up to 23rd day before travel commences 35%

Then up to 15th day before travel commences 45%

Then up to 8th day before travel commences 50%

Then up to 4th day before travel commences 65%

Then up to the day before travel commences 80%

On the day travel commences and no show 95%.

If the travel is significantly impeded, jeopardised or impaired as a result of unforeseeable force majeure when the agreement is concluded, both KM individual as well as you may cancel the agreement without notice. If the agreement is cancelled, KM individual may demand reasonable compensation for any travel services already or yet to be provided. KM individual is obliged to take the necessary steps to transport you home. The extra costs of repatriation incurred are to be shared equally by you and KM individual. Otherwise, the extra costs are the passenger's responsibility. If you break off a tour after travel commences for reasons that are wholly up to you, compensation is 100% of the travel price.

9. Changing the actual passenger

Up to seven days before travel commences you may ask that a nominated third party be included in the rights and obligations arising from the travel agreement. KM individual may oppose this inclusion if the third party fails to meet particular travel requirements or if his or her involvement is contrary to legal provisions or official ordinances. If duly included, you and the new passenger are jointly and severally liable for the travel price and extra costs incurred by including them.

10. Insurance

a) *Insolvency insurance:*

KM individual may only demand a deposit or full payment of the travel price if it is assured that if travel services are not provided due to the bankruptcy or insolvency of KM individual the travel price paid and costs required for the return trip will be refunded to you. KM individual has insured against this risk. You will receive the chattel paper, which certifies your direct claim against the insurer R+V Allgemeine Versicherung AG in the event of bankruptcy or insolvency, no later than when the initial deposit for the travel price is made.

b) *Travel insurance:*

In the event of your cancelling you may incur unexpectedly high costs in individual cases. KM individual therefore recommends you take out travel cancellation, travel accident, overseas health and baggage insurance especially.

11. Tour operator's liability

KM individual is liable as a prudent business for conscientious travel preparations, careful selection and monitoring of service providers and proper provision of contractually agreed travel services. However, KM individual is not liable for information in local, hotel or other brochures not published by KM individual, which have been provided by you or KM individual. KM individual is not liable for changes to flight schedules, delays or cancellations by carriers.

12. KM individual's limits of liability as a tour operator

a) Contractual liability:

The contractual liability for damages to you, which does not constitute physical injury, is limited to three times the travel price, as long as

I. Damage has not been caused by you with gross negligence or with intent or

II. KM individual is responsible for damage incurred by you alone where a service provider is at fault.

b) Tortious limit of liability:

For all compensation claims against KM individual arising from illicit action, which are not based on intent or gross negligence, KM individual's liability in property damage is a maximum of €4,100. If this sum is exceeded by triple the travel price, the liability for property damage is limited to triple the travel price. This maximum liability applies for each client and tour.

c) Statutory limits of liability:

A compensation claim against KM individual is limited or excluded if due to international treaties or statutory provisions based thereon, which are to be applied to services supplied by a travel provider, a compensation claim against the provider can only be asserted under certain terms or limitations or is excluded under certain terms.

If KM individual constitutes a contractually responsible shipping company in the case of cruises, liability is also regulated according to the terms of the commercial code (HGB) and inland waterways legislation.

If KM individual constitutes a contractually responsible airfreight forwarder, liability is regulated according to the terms of aviation law in conjunction with the international conventions of Warsaw, The Hague, Guadalajara and the Montreal Agreement. These treaties normally restrict the airfreight forwarder's liability to death or physical injury and to luggage losses or damages. If KM individual is the service provider in other cases, it is liable based on the terms that apply to them.

13. Remedy, mitigation, cancellation, compensation

a) If travel is not provided in compliance with the agreement, you may demand redress from KM individual. Irrespective of KM individual's duty to perform, your cooperation is required. You are obliged to do everything reasonably expected to help eliminate the interference and keep damages that may occur as limited as possible. You are particularly obliged to notify your tour manager of your complaint without delay. If KM individual fails to provide the offered remedy within a reasonable term stipulated by you, you may find your own remedy and demand compensation for the necessary expenses. KM individual can refuse to provide a remedy, if it requires unreasonable effort. The remedy consists of eliminating the travel defect and providing an equivalent replacement.

b) For the period of a travel service that does not comply with the contract, the passenger may claim a lowering (reduction) of the travel price. This claim does not apply if the passenger culpably fails to report the fault.

c) If a tour is significantly impaired as the result of a defect and if KM individual fails to provide a remedy within a reasonable period stipulated by you, you may cancel. The same applies if the tour cannot be conducted for an important reason recognised by KM individual as the result of a defect. The only time a term for providing a remedy is not required is if a remedy is not feasible or is denied by KM individual or if immediate cancellation of the agreement is justified due to a special interest on your part. You owe KM individual the part of the travel price incurred for the services used, insofar as this service was not entirely of no value to you. In your interest KM individual recommends giving notice in writing.

d) If a defect exists, irrespective of the reduction or cancellation, you can demand compensation due to non-fulfilment, unless the travel defect is based on a circumstance for which KM individual is not responsible.

14. Passport, visa and health requirements

When booking, KM individual provides information about passport, visa and health requirements for EU citizens without considering personal circumstances. For citizens of other states the consulate responsible provides the relevant information. It should be specifically noted that these terms may change subsequently at any time. You are also advised to follow the news media in order to comply with any changes in good time.

KM individual is not liable for the prompt issue and delivery of visas required by the respective diplomatic representative, even if you have authorised KM individual to obtain them, unless KM individual is responsible for the delay.

You should obtain information about infection and vaccination protection as well as other preventative measures in good time; please obtain medical advice on thrombosis and other health risks as required. General information is available from health authorities, doctors and information services with experience of travel-related medicine or the federal centre for health education.

You yourself are responsible for complying with all the important provisions in relation to conducting the tour. Any disadvantages that accrue from not complying with these provisions are at your expense, except if they are caused by erroneous or false information culpably provided by KM individual.

15. Claims, exclusion period, statute of limitation

a) You must assert any contractual claims due to non-provision or defective provision of travel services against KM individual in writing at the postal address given below within one month of the contractually foreseeable end of the tour. Claims may only be asserted after this deadline if it is missed at no fault.

b) Your stipulated claims lapse in one year, as long as they do not involve claims for physical injury or claims based on gross negligence. For all other contractual claims the statutory limitation period of two years applies. The statute of limitation begins on the day on which the tour was contractually supposed to end.

16. Validity of information in the travel planner

All details and information in KM individual travel planners concerning services, programmes, dates, flight departure times, prices and travel terms and conditions correspond to the inquiries obtained prior to publication. KM individual may make changes to the service and prices compared with details in the travel planners at any time before issuing a travel confirmation.

17. Court of jurisdiction

German law applies to the contractual relationship between the parties. The place of fulfilment and court of jurisdiction is Cologne (Germany). For lawsuits by KM individual the passenger's residence is the deciding factor, unless the parties to the travel agreement are businesspeople, judicial entities subject to public law. If the lawsuit is directed at individuals after concluding the agreement who have moved their place of residence or general venue for service abroad and/or their whereabouts is unknown at the date the lawsuit is filed, the court of jurisdiction is Cologne (Germany).

18. Invalidity of individual terms

The invalidity of individual terms arising from this agreement does not affect the validity of the remaining contractual terms, irrespective of whether the term is invalid when the agreement is concluded or becomes so subsequently. In place of the invalid terms a statutorily allowed term applies as agreed from the date of invalidity onwards namely the statutorily allowed term, which comes closest to the meaning and intended purpose of the invalid term.

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Only the German original and not the English translation is legally authoritative in all cases.