

# TERMS AND CONDITIONS OF BOOKING



## 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

### 1.1 Definitions:

**Booking:** means the booking made by the Customer in accordance with clause 3 and which takes the form of a contractual offer.

**Booking Period:** has the meaning given in clause 3.2.

**Booking Party:** all individual members of the Customer's party who go on the Holiday in accordance with this Contract.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Commencement Date:** has the meaning given in clause 3.7.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.3.

**Confirmation Letter:** the document issued by TGM to the Lead Contact which confirms details of the confirmed Booking.

**Contract:** the contract between TGM and the Customer for the supply of Services in accordance with these Conditions.

**Customer:** the individual(s) who purchases Services from TGM. Where applicable, **Customers** shall be construed accordingly.

**Customer Default:** has the meaning set out in clause 6.2

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Deposit:** the sum of money, as confirmed in the Confirmation Letter, payable by the Customer upon formation of the Contract, or at such other time as expressly agreed between the parties, in order to secure the booking of the Holiday.

**Force Majeure Event:** any circumstance not within TGM's reasonable control including, without limitation: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or

preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; interruption or failure of utility service; delays at ports, airports, train stations or coach stations; airspace closures; adverse weather conditions; an advisory by the Foreign, Commonwealth and Development Office against travel to a particular destination and any other government restrictions on travel.

**Holiday:** the trip that is the subject of the Confirmation Letter.

**Lead Contact:** the individual with whom TGM shall communicate on behalf of the Customer.

**Loss:** means actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, interest, liabilities, losses, penalties, proceedings and settlements, and **Losses** shall be construed accordingly.

**Payment Plan:** the agreed payment plan set out in the Confirmation Letter in respect of the Price, comprising of the Staged Payments.

**Personal Data:** all that personal data falling within the meaning given in the Data Protection Legislation disclosed to TGM relating to the Booking Party.

**Price:** the price of the Holiday, as initially referenced within the Quotation, subject to later confirmation within the Confirmation Letter and as amended from time to time in accordance with these Conditions.

**Quotation:** the document issued by TGM to the Lead Contact comprising details of the proposed quote for the Services.

**Services:** the Holiday, including the services supplied by TGM to the Customer for the Holiday, as confirmed in the Confirmation Letter.

**Staged Payments:** the payments made towards the Price at stages between the time of the Booking and the Holiday, as detailed within the Payment Plan or as otherwise agreed in writing between the parties or set out within these Conditions.

**TGM:** TGM Snowsports Limited, a company registered in England with company number 05043991 and whose registered address is International House, 35 St Davids Road South, Lytham St Annes, Lancashire, FY8 1TJ.

**VAT:** has the meaning given in clause 7.5.

**2018 Regulations:** means The Package Travel and Linked Travel Arrangements Regulations 2018 (available at: <https://www.legislation.gov.uk/ukdsi/2018/9780111168479/contents>)

## 1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.
- (d) A reference to **parties** shall mean TGM and the Customer.

## 2. Application of the 2018 Regulations to the Contract

Under the 2018 Regulations, it is a requirement that TGM (in its capacity as “trader” and “organiser”) provides the Customer (which is a “traveller” for the purposes of the 2018 Regulations) with a series of prescribed information in respect of any “package travel contract” (otherwise, the Contract and the Holiday) that the Customer is to enter into. In particular, TGM is required to provide the Customer with the following information:

“The combination of travel services offered to you is a package within the meaning of the Package Travel and Linked Travel Arrangements Regulations 2018.

TGM will be fully responsible for the proper performance of the package as a whole.

Key rights under the Package Travel and Linked Travel Arrangements Regulations 2018

- Travellers will receive all essential information about the package before concluding the package travel contract.
- There is always at least one trader who is liable for the proper performance of all the travel services included in the contract.

- Travellers are given an emergency telephone number or details of a contact point where they can get in touch with the organiser or the travel agent.
- Travellers may transfer the package to another person, on reasonable notice and possibly subject to additional costs.
- The price of the package may only be increased if specific costs rise (for instance fuel prices), and if expressly provided for in the contract, and in any event not later than 20 days before the start of the package. If the price increase exceeds 8% of the price of the package, the traveller may terminate the contract. If the organiser reserves the right to a price increase, the traveller has a right to a price reduction if there is a decrease in the relevant costs.
- Travellers may terminate the contract without paying any termination fee and get a full refund of any payments if any of the essential elements of the package, other than the price, has changed significantly. If before the start of the package the trader responsible for the package cancels the package, travellers are entitled to a refund and compensation where appropriate.
- Travellers may terminate the contract without paying any termination fee before the start of the package in the event of exceptional circumstances, for instance if there are serious security problems at the destination which are likely to affect the package.
- Additionally, travellers may at any time before the start of the package terminate the contract in return for an appropriate and justifiable termination fee.
- If, after the start of the package, significant elements of the package cannot be provided as agreed, suitable alternative arrangements will have to be offered to the traveller at no extra cost. Travellers may terminate the contract without paying any termination fee, where services are not performed in accordance with the contract and this substantially affects the performance of the package and the organiser fails to remedy the problem.
- Travellers are also entitled to a price reduction or compensation for damages or both where the travel services are not performed or are improperly performed.
- The organiser has to provide assistance if the traveller is in difficulty.
- The 2018 Regulations require TGM to provide security to the Customer for the monies they pay for Holidays booked with TGM and for their repatriation in the event of TGM's insolvency. TGM hold an Air Travel Organiser's Licence (ATOL number 12708) issued and administered by the Civil Aviation Authority (Aviation House, Beehive Ring Road,

Crawley, West Sussex, RH6 0YR, UK, telephone 0333 103 6350, email [claims@caa.co.uk](mailto:claims@caa.co.uk)).

- When the Customer buys an ATOL protected flight or flight inclusive package from TGM, the Customer will receive an ATOL Certificate. This lists what is financially protected, where the Customer can get information on what this means for them and who to contact if things go wrong.
- We, or the suppliers identified on your ATOL Certificate, will provide you with the services listed on the ATOL Certificate (or a suitable alternative). In some cases, where neither we nor the supplier are able to do so for reasons of insolvency, an alternative ATOL holder may provide you with the services you have bought or a suitable alternative (at no extra cost to you). You agree to accept that in those circumstances the alternative ATOL holder will perform those obligations and you agree to pay any money outstanding to be paid by you under your contract to that alternative ATOL holder. However, you also agree that in some cases it will not be possible to appoint an alternative ATOL holder, in which case you will be entitled to make a claim under the ATOL scheme (or your credit card issuer where applicable).
- If we, or the suppliers identified on your ATOL certificate, are unable to provide the services listed (or a suitable alternative, through an alternative ATOL holder or otherwise) for reasons of insolvency, the Trustees of the Air Travel Trust may make a payment to (or confer a benefit on) you under the ATOL scheme. You agree that in return for such a payment or benefit you assign absolutely to those Trustees any claims which you have or may have arising out of or relating to the non-provision of the services, including any claim against us, the travel agent (or your credit card issuer where applicable). You also agree that any such claims may be re-assigned to another body, if that other body has paid sums you have claimed under the ATOL scheme.
- When the Customer buys a non-flight inclusive Holiday the Customer's financial protection will be under TGM's membership of ABTA, membership number Y6867 & P8830. TGM are obliged to provide services in line with ABTA's Code of Conduct and in addition can also offer the Customer ABTA's scheme for the resolution of disputes which is approved by the Chartered Trading Standards Institute. If TGM cannot resolve the Customer's complaint or the Customer requires further information on the Code and ABTA's assistance in resolving disputes, go to [www.abta.com](http://www.abta.com) to use ABTA's simple procedure, or alternatively contact them by post at ABTA, 30 Park Street, London SE1 9EQ or call 020 3117 0500. The Customer can also access the European Commission Online Dispute Resolution (ODR) platform. This ODR platform is a means of registering

a Customer's complaint with TGM, however it will not determine how the complaint should be resolved

- 2.1 Each of the aforementioned information requirements are appropriately dealt with within the Quotation, these Conditions and the Confirmation Letter (as may be further explained on the Website). However, in the event that the Customer has any queries or concerns in respect of its position under the 2018 Regulations, the Customer is required to contact TGM in accordance with clause 17.6 (Notices).
- 2.2 In the event of any conflict between these Conditions, the Confirmation Letter and the implied terms and conditions contained in the 2018 Regulations, the 2018 Regulations shall prevail and nothing in the Contract seeks to limit or exclude such implied terms and conditions.

### **3. Basis of Contract**

- 3.1 Where the Customer wishes to purchase the Services from TGM, it shall either request that TGM issues a Quotation for those Services or make its Booking in respect of the Services via the Website in accordance with clause 3.4, below. Any Quotation issued by TGM under this clause 3.1 will contain detailed information in respect of:
  - (a) the Services;
  - (b) the Price (including the Deposit, Stage Payments and any Payment Plan); and
  - (c) any such further information as TGM may deem to be relevant for the purposes of the Holiday.
- 3.2 Following its issue of the Quotation TGM may, at its absolute discretion, withdraw or otherwise amend that Quotation and, unless otherwise agreed in writing between the parties, the Quotation shall be valid for 28 days from the date of issue (**Booking Period**).
- 3.3 If the Customer accepts the position set out in the Quotation, it shall be required to make a Booking for the Services within the Booking Period. The Customer can make a Booking based upon the Quotation in the following ways:
  - (a) email, by contacting [hello@tgmholidays.com](mailto:hello@tgmholidays.com);
  - (b) telephone, by contacting 01253 780050; or
  - (c) post, at TGM's registered office address (as set out within clause 1.1, above).

- 3.4 Alternatively, where the Customer wishes to purchase the Services based upon the contents of the Website, it may also make its Booking via the Website. On making the Booking under this clause 3.4, the Customer shall also be required to pay any applicable Deposit (which shall be stated on the Website). Any Deposit that is paid by the Customer is subject to TGM's acceptance of the Booking. Where TGM rejects the Booking under clause 3.7, TGM shall promptly return the Deposit to the bank account nominated in writing by the Customer.
- 3.5 The Booking constitutes an offer by the Customer to purchase the Services in accordance with these Conditions and shall not incorporate any other terms and conditions beyond those set out in these Conditions or the Quotation. This means that the Customer may not attempt to insert any terms which differ to those stated within the Quotation or these Conditions.
- 3.6 It is of paramount importance that the Quotation and the Booking accurately reflects the Services that the Customer wishes to purchase. The Customer is responsible for ensuring and warrants that the terms outlined in the Quotation and the Booking are complete and accurate in every respect. A warranty is a contractual promise from the Customer to TGM which, if broken by the Customer, may give rise to a damages claim on behalf of TGM.
- 3.7 TGM may reject the Booking at its absolute discretion and for any reason whatsoever and the Booking shall only be deemed to be accepted when TGM's authorised representative issues a Confirmation Letter to the Lead Contact, at which point the Contract shall come into existence (**Commencement Date**).
- 3.8 Any descriptive matter or advertising issued by TGM, and any descriptions or illustrations contained in TGM's advertising material are issued or published for the sole purpose of giving an approximate idea of the Services described in them. Unless otherwise set out within the Confirmation Letter, they shall not form part of the Contract or have any contractual force.
- 3.9 The Customer agrees to receive the Confirmation Letter via email only; however, a paper copy of the Confirmation Letter is also available on the Customer's request.

#### **4. The Lead Contact**

- 4.1 Where there are several Customers under the Contract and they enter into the Contract via a Lead Contact, the Lead Contract confirms and warrants that he or she:
- (a) are at least 18 years old on the date on which the Booking is made; and



- (b) have the authority to enter into the Contract on behalf of all other Customers named on the Booking.
- 4.2 Unless otherwise agreed with the Customers and subject to TGM's obligations under the 2018 Regulations, TGM shall deal only with the Lead Contact in all subsequent correspondence in respect of the Services.
- 4.3 If the identity of the Lead Contact changes at any time between the Commencement Date and the end of the Holiday, written notice must be provided to TGM of their details, whereupon the other individual shall be deemed to have repeated the warranties set out in clause 3.6 in respect of the replacement Lead Contact.
- 4.4 The Lead Contact is responsible for ensuring the accuracy of all information supplied by all other Customers under the Contract and is responsible for bringing the contents of these Conditions to the attention of those Customers and for ensuring familiarity.
- 4.5 Both TGM and all Customers have the right to enforce any terms of the Contract.

## **5. Performance of the Services**

- 5.1 In accordance with the 2018 Regulations, TGM will be responsible to the Customer for the performance of the Services under the Contract, notwithstanding whether those Services are to be provided by TGM or a third-party supplier.
- 5.2 The Customer must inform TGM, without undue delay, taking into account the circumstances of the case, of any lack of conformity with the Contract, which the Customer perceives, during the performance of the Services.
- 5.3 In the event of any non-conformity of the Contract, TGM will remedy that non-conformity within a reasonable period of time set by the Customer, unless that remedy is:
  - (a) impossible; or
  - (b) entails disproportionate costs, taking into account the extent of the lack of conformity and the value of the Services affected.
- 5.4 Where TGM is unable to provide a significant proportion of the Services as agreed in the Contract, TGM will offer, at no extra cost to the Customer, suitable alternative arrangements of, where possible, equivalent or higher quality than those specified in the Contract, for the continuation of the Contract. Where, under this clause 5.4, TGM's proposed alternative arrangements which result in Services of lower quality than that

specified in the Contract, TGM will grant the Customer an appropriate reduction of the Price.

5.5 The Customer may only reject the proposed alternative arrangements offered under clause 5.4 if:

- (a) they are not comparable to the arrangements which were agreed in the Contract; or
- (b) the price reduction granted is inadequate,

providing always that the Customer must act in a reasonable manner in making any such rejection.

5.6 If:

- (a) TGM is unable to make alternative arrangements under clause 5.4; or
- (b) the Customer rejects the proposed alternative arrangements in accordance with clause 5.5,

the Customer shall, where appropriate (and subject always to clause 12 (Limitation of Liability) and the Customer's compliance with its obligations under the Contract), be entitled to a price reduction, or compensation for damages, or both without terminating the Contract.

5.7 Where, at any time during the Holiday, the Customer encounters any difficulties, TGM will give appropriate assistance to the Customer without undue delay, in particular, by:

- (a) providing appropriate information on health services, local authorities and consular assistance; and
- (b) assisting the Customer to make distance communications and helping the Customer to find alternative travel arrangements.

5.8 In circumstances where any difficulty under clause 5.7 arises as a result of the Customer's negligence or is caused intentionally by the Customer, TGM reserves a right to charge a fee for any assistance provided, and such fee will not:

- (a) be unreasonable; or

- (b) exceed the actual costs incurred by TGM.

## 6. Customer's Obligations

### 6.1 The Customer shall:

- (a) ensure that any information it provides in relation to the Contract is true, complete and accurate;
- (b) co-operate with TGM in all matters relating to the Contract;
- (c) comply with any and all requirements and obligations set out in the Confirmation Letter;
- (d) provide, at its own cost, TGM with such information and materials as TGM may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date of the Holiday; and
- (f) comply with such other reasonable instructions or requirements of TGM notified to it from time to time,

and where required by TGM provide it with evidence of such compliance.

### 6.2 If TGM's performance of any of its obligations under this Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**), without limiting or affecting any other right or remedy available to it:

- (a) TGM shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays TGM's performance of any of its obligations;
- (b) TGM shall not be liable for any Losses sustained or incurred by the Customer arising directly or indirectly from TGM's failure or delay to perform any of its obligations as set out in this clause 6.2; and
- (c) the Customer shall:
  - (i) reimburse TGM on written demand for any Losses sustained or incurred by TGM arising directly or indirectly from the Customer Default; and
  - (ii) pay any applicable termination and/or early cancellation fees that may apply under the Contract.

## **7. Prices and Payment**

7.1 The Confirmation Letter shall contain the full Price of the Holiday per person at the time the Contract is entered into.

7.2 The Price under clause 7.1 is provisional and may be altered to take account of:

- (a) the price of the carriage of passengers resulting from the cost of fuel or other power sources;
- (b) the level of taxes or fees on the Services included in the Contract imposed by third parties not directly involved in the performance of the Services, including tourist taxes, landing taxes or embarkation or disembarkation fees at ports and airports; and
- (c) the exchange rates relevant to the Services,

providing always that any alteration under this clause 7.2 will be notified to the Customer no less than 20 days prior to the commencement of the Holiday. Where the matters stated within this clause 7.2 lead to a reduction in the applicable costs, the Customer shall be entitled to a reduction in the Price.

7.3 Where any alteration to the Price under clause 7.2 exceeds 8% of the total Price, then clause 9.3 shall apply.

7.4 TGM shall invoice the Customer in accordance with the Payment Plan and the Customer shall pay each invoice submitted by TGM:

- (a) by the deadline as set out in the Payment Plan; and
- (b) in full and in cleared funds to a bank account nominated in writing by TGM, and

time for payment shall be of the essence under the Contract. This means that if the Customer fails to pay in accordance with the Payment Plan, TGM may have a right to terminate the Contract.

7.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by TGM to the Customer, the Customer shall, on receipt of a valid VAT invoice from TGM, pay to TGM such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services in accordance with the Payment Plan.

- 7.6 If the Customer fails to make a payment due to TGM under the Contract by the due date, then, without limiting TGM's remedies under clause 10, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when that base rate is below 0%.
- 7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 7.8 The Price must be paid by the Customer to TGM no later than 4 weeks prior to the commencement of the Holiday, unless the parties have agreed otherwise in writing.

## **8. Changes to the Services by the Customer**

- 8.1 If, after TGM has issued the Confirmation Letter, the Customer (or, where applicable, any individual Customer) wishes to:
- (a) change the arrangements of the Holiday in any way;
  - (b) change the quantity of Customers compared with the quantity as per the Confirmation Letter; or
  - (c) transfer a Customer's place on the Holiday to another person, who satisfies all the conditions that apply to the Holiday,

the Lead Name (or, where applicable, any individual Customer) shall be required to inform TGM in writing of the proposed change or transfer as soon as is reasonably possible and, in the case of a transfer under clause 8.1(c), no later than 7 days prior to the commencement of the Holiday.

- 8.2 Any change and/or transfer to the Contract under clause 8.1 is subject to
- (a) the payment by the Customer of any additional fees, charges or other costs arising from the change and/or transfer ("**the Transfer Costs**") in accordance with any applicable Payment Plan (which may be revised by TGM in order to account for the Transfer Costs under this clause 8.2); and
  - (b) where clause 8.1(c) applies, the incoming Customer ensuring compliance with existing obligations that have been created under the Contract (such as, for example, complying with the contractual terms of any national or international suppliers in respect of the Holiday) and any regulatory requirements that may affect the change and/or transfer.

- 8.3 Any Transfer Costs under clause 8.2(a):
- (a) will not:
    - (i) be unreasonable; or
    - (ii) exceed the total costs incurred by TGM as a result of the change and/or transfer; and
  - (b) are to be borne by the outgoing Customer and the incoming Customer on a joint and several basis.
- 8.4 TGM reserves the right, in its sole discretion, to not consider any request for and change and/or transfer notified under clause 8.1 which are notified to TGM:
- (a) in the case of any change under clause 8.1(a) and clause 8.1(b), within 14 days of the Holiday; or
  - (b) in the case of any change under clause 8.1(c), within 7 days of the Holiday (or any other such shorter period of time as TGM deems to be reasonable).
- 8.5 TGM may, at its absolute discretion and without any liability to make any compensation payments to the Customer, terminate the Contract (and provide the Customer with a full refund of the Price) where:
- (a) any proposed change made under clause 8.1(b) or reduction in the Booking Party otherwise results in the total number of members of the Booking Party being reduced from the number stated on the Confirmation Letter. Where TGM terminates the Contract under this clause 8.5(a), TGM shall inform the Customer of such termination in writing no later than:
    - (i) in the case of Holidays lasting more than 6 days, 20 days before the start of the Holiday;
    - (ii) the case of Holidays lasting between 2 and 6 days, 7 days before the start of the Holiday;
    - (iii) in the case of Holidays lasting less than 2 days, 48 hours before the start of the Holiday;
  - (b) TGM is prevented from performing the Contract because of unavoidable and extraordinary circumstances (including due to a Force Majeure Event), providing that TGM notified the Customer such termination without undue delay before the start of the Holiday.
- 8.6 Without prejudice to TGM's rights under clause 8.5(a), where any change made under clause 8.1(b) which results in the total number of members of the Booking Party being

reduced from the number stated on the Confirmation Letter will incur an additional cost, which TGM shall notify to the Customer of such additional costs, which shall be payable by the Customer on receipt of TGM's invoice for those costs (which shall set out the due date for payment). Where any additional costs raised under this clause remain unpaid by the Customer within the time frames specified by TGM, TGM reserves its right to terminate the Contract pursuant to clause 8.5(a).

## **9. Changes to the Services by TGM**

- 9.1 TGM will not unilaterally change the provisions of the Contract prior to the commencement of the Services in circumstances other than those set out within the Contract (including but by no means limited to those provisions relating to the Price under clause 7 and clause 8 respectively).
- 9.2 TGM reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and TGM shall notify the Customer in any such event. Examples of such amendments include, but are not limited to:
- (a) changes to the airline, airport, ferries or coach used for the Holiday;
  - (b) changes to the departure times of less than 12 hours; and
  - (c) the change of hotel to one of an equivalent or higher standard as determined in TGM's absolute discretion.
- 9.3 Where, before the start of the Holiday, TGM:
- (a) owing to circumstances outside of its control (including but by no means limited to the occurrence of a Force Majeure Event) is required to significantly amend the Services to be provided;
  - (b) cannot fulfil any special requirements notified to it within the Booking (providing always that such special requirements are accepted within the Confirmation Letter);
  - (c) proposes to increase the Price by more than 8% pursuant to clause 7.2,
- clause 9.4 to clause 9.8 shall apply.
- 9.4 In the circumstances stated within clause 9.3, TGM will promptly inform the Customer in writing in a clear, comprehensible and prominent manner of:
- (a) the proposed changes referred to in clause 9.3;

- (b) a reasonable period within which the Customer must respond under clause 9.5 and the consequences of a failure to respond within that period of time;
- (c) where applicable, any substitute Services of an equivalent or higher quality that may be available and the impact upon the Price.

9.5 Upon receipt of the information provided under clause 9.4 and within the timeframe specified within clause 9.4(b), the Customer may:

- (a) accept the proposed changes to the Contract; or
- (b) terminate the Contract without paying any termination fees, and

notwithstanding any termination under clause 9.5(b), the Customer may accept any substitute Services as may be offered by TGM.

9.6 Where the Customer:

- (a) terminates the Contract pursuant to clause pursuant to clause 9.5(b); and
- (b) does not accept substitute Services pursuant to clause 9.4(c),

TGM will refund to the Customer any proportion of the Price that has been paid by the Customer within 14 days of the Customer's notice of termination.

9.7 In the event that the Customer fails to respond within the timeframe stated under clause 9.4(b) its intended action under clause 9.5 (whether it intends to accept the proposed changes or terminate the Contract), where possible (and noting always that some significant changes that may be required under clause 9.3 may come to TGM's attention very close to the beginning of the Holiday) TGM will further inform the Customer on a second occasion of those matters set out under clause 9.4.

9.8 Where the Customer fails to respond within the required period of time to the second notification stated within clause 9.7, without prejudice to TGM's rights and remedies under the Contract, TGM shall be entitled to:

- (a) terminate the Contract; and
- (b) refund to the Customer any proportion of the Price that has been paid by the Customer within 14 days of the TGM's notice of termination.

## **10. Termination and Cancellation**

10.1 Without affecting any other right or remedy available to it, TGM may terminate the Contract with immediate effect by giving written notice to the Customer if:



- (a) the Customer (or any member of the Booking Party) commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days (or such shorter period as may be notified in writing by TGM in the event that the Holiday taking place is contingent on compliance in such shorter period of time) of being notified in writing to do so;
- (b) the Customer's (or any member of the Booking Party's) financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (c) the Customer (or any member of the Booking Party) is the subject of a bankruptcy petition, application or order
- (d) the Customer (or a member of the Booking Party) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation; or
- (e) the Customer fails to pay any amount due under the Contract on the due date for payment,

and in such circumstances, subject always to the 2018 Regulations, TGM may retain any monies paid in respect of the Price and any other expenses incurred up to the date of the cancellation.

- 10.2 If the Customer wishes to terminate the Contract for any reason (including but by no means limited to those reasons set out within the Contract or otherwise as may arise pursuant to the 2018 Regulations), it can do so by providing notice in writing to TGM in advance of the Holiday.
- 10.3 If the Contract is terminated in accordance with clause 10.2, the Customer shall be required to pay an appropriate and justifiable termination fee to TGM which will be based upon the Price compared with any cost savings and income received from alternative deployment of the services under the Contract:
- 10.4 Where any cancellation of a member or members of the Booking Party reduces the number of full paying party members below the Booking Party according to the Confirmation Letter, TGM will recalculate these items and re-invoice the Customer accordingly and reserves the right to charge a cancellation fee.
- 10.5 If TGM terminates the Contract for any reason, not including those outlined in clause 10.1 above, TGM will use best endeavours to inform the Customer without delay and offer the Customer the following options:

- (a) alternative travel arrangements if available; or
- (b) a full refund of all monies paid.

10.6 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

## **11. Data Protection**

11.1 TGM shall comply with its data protection obligations as set out in the privacy policy which is available at: <https://tgmholidays.com/privacy-policy/>.

11.2 Each party shall comply with its obligations under the Data Protection Legislation.

11.3 The Customer warrants and undertakes to TGM that:

- (a) it is entitled to transfer the Personal Data to TGM in accordance with the Data Protection Legislation;
- (b) it has had no notice of any claims or complaints in connection with the Data Protection Legislation by data subjects or the ICO in relation to the Personal Data;
- (c) it is not aware of any circumstances likely to give rise to breach of any of the Data Protection Legislation in the future through TGM's processing of the Personal Data or any notice of the types described in clause 8.2(b); and
- (d) all data subjects relating to the Personal Data have given their valid written consent and, where required under the Data Protection Legislation, their explicit consent to the disclosure and transfer of their Personal Data by the Customer to TGM and to the processing of their Personal Data by TGM in connection with the Services.

11.4 TGM shall use the Personal Data belonging to members of the Booking Party in order to provide the Services.

## **12. Limitation of Liability**

12.1 References to liability in this clause 12 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 12.2 Nothing in this clause 12 shall limit the Customer's payment obligations under the Contract.
- 12.3 Nothing in these Conditions shall limit or exclude either party's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - (b) fraud or fraudulent misrepresentation; or
  - (c) any matter in respect of which it would be unlawful for either party to exclude or restrict liability (including but not limited to TGM's implied duties under the 2018 Regulations and associated legislation governing the Services).
- 12.4 Subject to clause 13.2, TGM's total liability to pay the Customer compensation as a result of TGM's breach of the Contract shall in no circumstances exceed three times the total Price paid or payable by the Customer in respect of the Services to TGM under the Contract.
- 12.5 For the avoidance of doubt, the Customer shall not be entitled to any compensation under the Contract where any non-compliance by TGM arises as a result of the:
- (a) Customer's failure to comply with its obligations; or
  - (b) occurrence of a Force Majeure Event.
- 12.6 TGM does not accept responsibility for any services which do not form part of the Contract, for example, any additional services or facilities which the hotel or any other supplier agrees to provide to the Customer where the services or facilities are not advertised by TGM and TGM has not agreed to arrange them as part of the Contract.
- 12.7 This clause 12 shall survive termination of the Contract.

### **13. Force Majeure**

- 13.1 TGM shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from the occurrence of a Force Majeure Event.
- 13.2 Where, prior to the commencement of the Holiday, a Force Majeure Event renders TGM unable to perform its obligations under the Contract, TGM shall be entitled to terminate the Contract on providing prompt written notice of such to the Customer.

- 13.3 TGM accepts no liability for any Losses that may be caused to the Customer for any delay or termination under this clause 13.

#### **14. Insurance and Insolvency Protection**

- 14.1 It is a condition of the Contract that from the Commencement Date, the Customer and the Booking Party shall have in place adequate and valid travel insurance in respect of the Holiday from reputable insurance companies, such insurance to include coverage for all activities (including, in particular, sporting activities) that are to take place during the Holiday, emergency medical expenses, personal accident, repatriation, baggage cover, cancellation cover, Covid-19 related issues and incidents, and the occurrence of Force Majeure Events.
- 14.2 TGM is appointed to act as an appointed representative of Howden UK Brokers Limited & Ancile Insurance Group Ltd who are authorised and regulated by the Financial Conduct Authority. Where the Customer wishes to obtain the insurance required under clause 14.1 via TGM, please contact TGM.
- 14.3 The Customer's attention is drawn to TGM's insolvency protection policies, as set out within clause 2 of these Conditions.
- 14.4 Upon receipt of notification from TGM in writing, the Customer shall be required to provide TGM with full particulars of any policies of insurance held under this clause 14.

#### **15. Passport, Visa and Health Requirements**

- 15.1 Passport, visa and any other immigration requirements in relation to the Holiday are the sole responsibility of the Customer. TGM accepts no responsibility for any Losses suffered by the Customer in the event that such requirements have not been complied with.
- 15.2 If any member of the Booking Party has any special requirement, medical problem or disability which may affect the Holiday arrangements of that person, the Customer must inform TGM prior to making the Booking. If TGM or any of the third-party suppliers are unable to properly accommodate the needs of the person concerned, TGM reserves the right to decline their reservation.
- 15.3 If any member of the Booking Party develops any special requirement, medical problem or disability which may affect the Holiday arrangements of that person after the Confirmation Letter is issued, the Customer must inform TGM immediately. Clause 8 of these Conditions shall apply in such circumstances.

- 15.4 TGM will not be liable for any loss arising from the Customer's failure to inform TGM about any medical problem, disability or special need which might affect an individual's enjoyment or participation on Holiday.

## **16. Behaviour during the Holiday**

- 16.1 The Customer accepts full responsibility for any damage or Loss caused by any member of the Booking Party during the Holiday. Full payment for any such damage or Loss (reasonably estimated if not precisely known) must be made directly to the accommodation owner, manager of any other supplier, TGM, or any other supplier of services to whom such Loss is caused as soon as possible and in any event before the conclusion of the Holiday, unless an alternative arrangement for payment for any damage or Loss is agreed in writing between the parties.
- 16.2 The Customer accepts responsibility for the good conduct of all members of the Booking Party during the Holiday and warrants that the correct ratio of responsible adults (where children are members of the Booking Party) will be on active duty at all times to ensure that all participants behave responsibly.
- 16.3 If in TGM's reasonable opinion or in the reasonable opinion of any other person in authority (such as, for example, TGM's suppliers), any member of the Booking Party behaves in such a way as to cause or be likely to cause danger, upset or distress to any third party or damage to property, TGM shall be entitled, without prior notice, to terminate the Holiday of the person(s) concerned. In this situation, the person(s) concerned will be required to leave the accommodation or other service and TGM will have no further responsibility toward such person(s) or the Customer for any Loss caused. For the avoidance of doubt, no refunds will be made under this clause 16.3.

## **17. General**

### **17.1 Assignment and other dealings.**

- (a) TGM may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) Clause 8 governs the Customer's rights under the 2018 Regulations to transfer the Holiday to another person.

### **17.2 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances,

warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

**17.3 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**17.4 Waiver.**

- (a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- (b) For the avoidance of doubt, nothing in the Contract shall seek to waive the Customer's implied rights and remedies under the 2018 Regulations.

**17.5 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 17.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**17.6 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office

(if a company) or its principal place of business (in any other case); or sent by email to the address specified on the Confirmation Letter.

- (b) Any notice or communication shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (iii) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.6(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a Business Day.
- (c) This clause 17.6 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**17.7 Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**17.8 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

**17.9 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.