

# GENERAL TERMS AND CONDITIONS OF BOAT HIRE (Status: August 2020)

## INTRODUCTION AND SCOPE OF APPLICATION

1. These General Terms and Conditions of Boat Hire (hereinafter referred to as "GTC") govern the legal relations between you and us, Locaboat Plaisance GmbH, Ludwigstr. 1, 79104 Freiburg (hereinafter referred to as "LP" or "we/us") in relation to the boat hire contract concluded between us. 2. These GTC apply exclusively to consumers pursuant to Section 13 of the German Civil Code (BGB) i.e. any natural person who concludes a legal transaction for purposes which primarily cannot be attributed either to their commercial or their independent professional activity (hereinafter referred to as "Customer"). 3. These GTC, as amended at the time of the order, apply exclusively to our business relations with our customers, also with respect to information and advice. Any different terms and conditions of the Customer shall not apply. 4. Please read through our catalogue and the following text carefully. 5. In addition, the Captain's Handbook applies, which shall be sent to the Customer as part of the confirmation of the booking and is available at [www.penichette.com/en/downloads](http://www.penichette.com/en/downloads).

## A. GENERAL INFORMATION

### I. Conclusion of the hire contract and payment

1. By registering (booking request), the Customer is offering to conclude a hire contract with binding effect with LP concerning one or several boats. The Customer can register in writing (e.g. using our booking form), or in electronic form, e.g. via our website. Booking request is made by the Customer for all passengers listed in the registration as well. 2. A contract shall be concluded only upon express acceptance by LP. Acceptance requires no specific form but is made as a rule by sending the booking confirmation/invoice. If the content of the booking confirmation differs from the content of the registration, this is a new offer by LP, by which LP shall be bound for a period of one week. The contract shall be concluded on the basis of this new offer if the Customer declares acceptance to LP within the binding period, which can also take the form of a payment. 3. Seven (7) working days after receipt of the booking confirmation, a down payment of 40 % of the hire price shall be due for payment. LP must receive payment of the balance at the latest four weeks before the start date. Where the balance is not paid within the time stipulated, LP shall have the right not to allow the Customer to board the boat and to cancel the contract. 4. Where travel is with several boats, a separate hire contract shall be concluded for each boat - also where registration is at the same time and a travel group is registered - unless otherwise expressly agreed in written or text form. Interference with the performance of one hire contract shall, therefore, not affect other hire contracts.

### II. Services, insurances

1. The scope of the contractual services follows from the specification of services in LP's catalogue and from the information in the booking confirmation referring hereto. The information contained in the catalogue is binding for LP. Collateral agreements which change the scope of the contractual services shall require an express confirmation.

2. Personal items of the Customer and other fellow passengers are not insured. It is recommended in this respect that the Customer takes out own baggage and travel accident insurance in his/her own interest.

### III. Cancellation by the Customer, change in booking, substitute persons

1. The Customer is not entitled to a statutory right of revocation pursuant to § 312g para. 2 g) BGB (Bürgerliches Gesetzbuch - German Civil Code). 2. The Customer can cancel the hire contract at any time before the start date. Timeliness shall be determined by receipt of the cancellation notice by LP. It is recommended that the Customer gives notice of cancellation in writing. If the Customer cancels the hire contract or does not start the cruise, LP can require reimbursement for arrangements made, its expenses and its lost profit. When calculating the reimbursement, expenses usually saved and other usually possible use of the hire services shall be taken into account. LP can consolidate this claim for reimbursement as a lump sum, taking into account the following breakdown, according to the proximity of the cancellation date to the contractually agreed start date, as a percentage of the hire price:  
Cancellation notice more than 49 days before start date = 35 %, between 49 - 39 days before start date: 40 %, 38 - 36 days before start date = 50 %, 35 - 22 days before start date: 60 %, 21 - 15 days before start date: 70 %, 14 - 2 days before start date: 80 %, 1 day before start date: 90 %, Cancellation on the start date ("no show"): 100 % The above-mentioned lump sums are to be understood less the saved expenses of LP. 3. The Customer is expressly permitted to prove that LP incurred no damage at all or significantly lower damage than the above-mentioned lump sums. LP urgently recommends that the Customer takes out a travel cancellation insurance. 4. In the event of LP approving a change in booking as a gesture of goodwill, a rebooking fee of € 100 shall be incurred.

### IV. Cancellation and termination by LP

LP can cancel the hire contract before the start date, without complying with a notice period, or terminate the hire contract after the cruise starts if the Customer or fellow passengers persistently act(s) in breach of the contract and/or violate safety regulations (e.g. resulting from the Captain's Handbook) to such an extent that the immediate cancellation of the contract is justified. In such case, LP shall retain the right to the hire price.

### V. Liability of LP

1. LP is liable, limited by the provisions of this paragraph A. VI. hereinafter set forth, within the scope of due diligence of prudent commercial judgment, for the diligent preparation of the houseboat cruise, the careful selection and monitoring of key personnel and service providers of LP, the accuracy of the specification of services and the due provision of the contractually agreed services.

### VI. Limitation of liability and damages

1. The Customer shall have no claims to damages. Excluded from this are damage claims by the Customer arising from injury to life, limb or health or from the violation of material contractual obligations ("obligations of particular importance for achieving the purpose of the contract") and liability for other damage which is based on an intentional or grossly negligent breach of duty by LP, its legal representatives or vicarious agents. Material

contractual obligations ("obligations of particular importance for achieving the purpose of the contract") are obligations, the fulfillment of which makes the due performance of the contract possible in the first place, and where the Customer relies and may also rely on compliance with such obligations. 2. LP shall be liable in the case of violation of material contractual obligations only for foreseeable damage which is typical for the contract if this was caused by simple negligence, unless it is a matter of damage claims by the Customer arising from injury to life, limb or health.

3. The limitations of paragraph A. VI. 1. and 2. also apply for the benefit of LP's legal representatives and vicarious agents if claims are asserted directly against them. 4. The limitations of liability resulting from paragraph A. VI. 1. and 2. shall not apply if LP has fraudulently concealed a defect or has provided a guarantee for the quality of the article. The provisions of the Produkthaftungsgesetz [German Product Liability Act] remain unaffected.

5. LP is not liable for disruptions to services in connection with services which are only arranged as external services of third parties and identified in the advertisement expressly as external services of third parties, unless LP is responsible for the disruption to services.

6. If disruptions to services have occurred, the Customer shall be obliged to cooperate within the framework of statutory provisions to avoid or minimise any damage. The Customer shall in particular be obliged to ring complaints immediately to the attention of the competent mooring place, which is tasked with providing for a remedy, if this is possible. If the Customer culpably omits to notify a defect or disruptions, a claim for reduction shall not arise.

### VII. Exclusion of claims and limitation period

Claims for failure to provide the hire service as provided in the contract are subject to the statutory limitation period. If negotiations are conducted between the Customer and LP concerning the claims, the limitation period shall be suspended until the Customer or LP refuses to continue the negotiations.

### VIII. Data protection

Your personal data (e.g. title, name, address, e-mail address, telephone number) shall be processed by us only in accordance with the provisions of the Bundesdatenschutzgesetz (BDSG) [German Federal Data Protection Act] and the General Data Protection Regulation (GDPR). The Customer can refer to our privacy policy for details which is available at <https://www.locaboat.com/en/data-policy/>

### IX. Choice of law final provisions

1. The law of the Federal Republic of Germany shall apply to contracts between LP and the Customer, to the exclusion of the UN Sales Convention. Statutory provisions on the limitation of the choice of law and on the applicability of mandatory (consumer protection) regulations, especially of the state in which the Customer habitually resides as consumer remain unaffected.

2. The EU Commission provides a platform for out-of-court dispute settlement procedures. This gives consumers the opportunity first to clarify disputes in connection with their online order out of court. The dispute settlement platform is available at: <https://ec.europa.eu/consumers/odr>. Apart from this, LP does not take part in dispute settlement procedures before a consumer arbitration service (Section 36 VSBG [German Law on Dispute Settlement for Consumers]).

3. Customers can contact us at any time in writing or by e-mail regarding complaints or questions in relation to our services at: Locaboat Plaisance GmbH, Ludwigstr. 1, DE-79104 FREIBURG, Fax: +49 (0)761 207 37 73, e-mail: [info@locaboat.de](mailto:info@locaboat.de)

4. Amendments to and modifications of these GTC shall only be valid when given in writing. This also applies to this requirement of written form itself. The precedence of the individual agreement pursuant to Section 305b BGB remains unaffected by this.

## B. SPECIAL REQUIREMENTS FOR PROVIDING BOATS AND FOR HANDLING BOATS

### I. Suitability

The captain on board (Customer) must be of legal age and bears the responsibility for the equipment entrusted to him/her. The captain must show his/her ID card during embarkation. LP reserves the right, at its own discretion, if the customer is not able to take responsibility for himself and his fellow passengers, e.g. due to current weather conditions, or to steer the boat safely, to order the customer to stay in the mooring place or to limit the sailing area. There must always be at least 2 adults on board during the navigation of the boat.

### II. Deposit, excess

A deposit must be paid when boarding the boat. The deposit shall be refunded when the cruise ends if the boat is returned safe and sound at the agreed time and at the agreed place. The Customer shall be liable for damage to the boat and equipment, for accidents and ancillary costs, up to the amount of the deposit. Beyond the deposit, the Customer shall be liable in cases of gross negligence and intent. See paragraph B. VIII. of these GTC and the Captain's Handbook "exclusion from the insurance" ([www.penichette.com/en/downloads=captain-handbook](http://www.penichette.com/en/downloads=captain-handbook)).

### III. Boarding the boat

The boat shall be available to the Customer when he/she has completed the necessary formalities (e.g. recording of personal data, copies of identity cards, deposit of the deposit etc.), checked the condition of the boat and inventory and has followed the theoretical instruction in navigation and handling of the boat. Embarkation takes place in the afternoons, between 14.00 and 18.00. Embarkation can take place at a different mooring place in the case of lock repairs, high water or other unforeseeable circumstances which make embarkation impossible at the designated place.

### IV. Changes to the place of departure, restrictions on cruising, Force majeure

1. In case of closure of the canal, high water, lack of water, bank reinforcement work, lock repairs, strikes by lock keepers etc., embarkation can take place at a different location or the possibility to cruise can be restricted. LP is not responsible for such changes or restrictions. They do not entitle the Customer to cancel the hire contract.

2. If LP cannot make the boat available to the Customer or cannot do so in due time or the booked route as a result of force majeure such as strikes, natural disasters, floods, droughts, lock closures, war, civil war, pan- or epidemics

or any other reasons beyond LP's control that lead to route changes, interruptions, limitations, restrictions and/or closures etc., LP will inform the Customer immediately and will do its best to provide the Customer with a boat of equal comfort and capacity or an alternative route as soon as possible. Should this not be possible, LP is entitled to withdraw from the contract.

### V. One-way cruises

Even if LP has already confirmed a one-way cruise (differing port of departure and destination), this service is never conclusively binding because LP can be obliged, as a result of unforeseeable cases or force majeure (see paragraph B. IV. 2), to change the cruise direction or require an outward and return cruise, without this resulting in a right of the Customer to cancel the contract. Only any surcharges paid for the one-way cruise shall be refunded. It is essential that the Customer has the one-way cruise confirmed by LP by telephone 48 hours prior to departure.

### VI. Route suggestions, unusable waterways, force majeure

The suggested routes on public waterways and bodies of water are subject to official intervention and to be understood only as non-binding suggestions. The Customer is permitted to move freely within the specified navigational limits and to choose the cruise routes himself/herself. LP assumes no liability in the event that routes or sections of routes are un navigable due to official closures of individual waterways. Liability is likewise excluded in the case of force majeure (see paragraph B. IV. 2).

### VII. Damage and accidents, insurances

1. The hire price includes fully comprehensive insurance for the boat and a liability insurance for damage which the Customer or fellow passengers cause with the boat to third parties. The Customer is, however, liable with an excess in the amount of the deposit for all claims arising from insured event. 2. In the case of damage or accident, the Customer must notify the mooring place immediately and await instructions as to further action. In the case of an accident, the Customer may not acknowledge either his/her liability towards third parties or repair the boat or incur other costs without the prior consent of the mooring place. Damage or an accident shall not entitle the Customer either to a reduction in the hire price or to damages, unless these are the responsibility of LP on account of intent or gross negligence.

### VIII. Liability beyond the deposit

In the case of intent or gross negligence such as drunkenness at the helm, cruising outside the navigable channel, in the dark or insufficient visibility, crossing large lakes or other bodies of water where the wind force is more than 3 on the Beaufort scale, over-occupancy of the boat, failure to comply with safety regulations and navigation rules etc., the Customer can be held liable for the total damage caused by the Customer. See also Captain's Handbook "exclusion from the insurance" ([www.penichette.com/en/downloads=captain-handbook](http://www.penichette.com/en/downloads=captain-handbook)).

### IX. Interruption in the cruise and breakdowns

1. Interruptions in the cruise or breakdowns that lead to an interruption of the cruise under 24 hours shall not entitle the Customer to a reduction in the hire price or to damages, unless they are based on intent or gross negligence of the mooring place or LP. The mooring place maintains a repair service, which can be contacted daily and remedies all damage to boats and engines professionally and as quickly as possible.

2. If the hire service is not provided according to the contract, the Customer can require a remedy. The mooring place can refuse a remedy if this requires a disproportionate effort. It can also provide a remedy by providing an equivalent substitute service. Such remedy can also be provided by advice over the telephone.

3. If the interruption of the cruise of the boat was the result of a breakdown through no fault of the Customer persists for longer than 24 hours, LP shall reimburse the Customer the pro rata hire price which the Customer has paid for the time not used. The duration of inactivity of the boat shall be calculated from the moment when the Customer notifies the mooring place of the breakdown.

4. If a cruise is severely affected as a result of a significant defect and the mooring place fails to provide a remedy within a reasonable period, the Customer can terminate the hire contract within the framework of statutory provisions. The same applies if the cruise cannot reasonably be expected of the Customer as a result of a defect for objectively good cause that is recognisable and reasonable according to the assessment of the mooring place. Determination of a time limit for the remedy shall only be necessary if a remedy is impossible or it is refused by the mooring place.

The Customer shall owe LP the portion of the hire price applicable to the services used, if and as long as these services were of use to the Customer. 5. If it is established that the damage or a defect was culpably caused by the Customer or a fellow passenger, the Customer cannot require damages but must reimburse LP for damage incurred.

### X. Regulations for the boat cruise

The Customer shall observe not only the inland navigation regulations but also the instructions issued by the mooring place and the navigation authorities. It is prohibited to sail in the dark, to tow boats, to hire out or lend the boat.

### XI. Use of the boat

The Customer is obliged to use the boat with the greatest possible care. The Customer shall be liable to LP not only for damage to the boat and its equipment but also for loss of the same. LP resp. the mooring place can assert damage incurred from one of these cases against the Customer. Any liability of LP or the mooring place for loss or damage to personal items of the Customer and fellow passengers shall be excluded, unless the loss or damage was caused by the mooring place through gross negligence. Slight negligence is not sufficient.

### XII. Return of the boat

The Customer shall return the boat and its equipment punctually at the agreed place of return in a sound and clean condition. The boat shall be returned in the morning between 8.00 a.m. and 9.00 a.m. When the boat is returned, the mooring place shall inspect the boat and its equipment. The Customer undertakes to notify the mooring place of any missing, broken or stolen items of equipment. The mooring place has the right to deduct any established damage or loss from the deposit. If the boat is not returned to the agreed place of return or not vacated and returned punctually, the Customer shall be liable for damage incurred by the mooring place and LP as a result of the delay.