

## HOLIDAY CHECK AG - Website Terms and Conditions of Use

The following sets out the terms and conditions of use for [www.holidaycheck.com](http://www.holidaycheck.com) (the "Website").

These terms and conditions of use apply to any use of the Website including your browsing and uploading of hotel/holiday reviews, pictures taken by tourists/travellers, travel videos, forum postings, and any other publications by you on the Website.

### I. Content of the online service

HolidayCheck AG, whose registered company address is at Müliggässli 1 in 8598 Bottighofen, Switzerland ("we", "us", "our") runs and operates the Website.

Other web pages also run by the HolidayCheck AG are e.g. [www.holidaycheck.de](http://www.holidaycheck.de), [www.holidaycheck.at](http://www.holidaycheck.at), [www.holidaycheck.ch](http://www.holidaycheck.ch), [www.holidaycheck.com](http://www.holidaycheck.com), [www.holidaycheck.co.uk](http://www.holidaycheck.co.uk), [www.holidaycheck.fr](http://www.holidaycheck.fr), [www.holidaycheck.es](http://www.holidaycheck.es), [www.holidaycheck.it](http://www.holidaycheck.it), [www.holidaycheck.nl](http://www.holidaycheck.nl), [www.holidaycheck.pl](http://www.holidaycheck.pl), [www.holidaycheck.cz](http://www.holidaycheck.cz), [www.holidaycheck.ru](http://www.holidaycheck.ru), [www.openholidayguide.de](http://www.openholidayguide.de), [www.urlaubsbilder-online.de](http://www.urlaubsbilder-online.de), [www.hotelbewertungen.de](http://www.hotelbewertungen.de), [www.hotelkritiken.com](http://www.hotelkritiken.com) and [www.urlaub.com](http://www.urlaub.com).

Although HolidayCheck AG takes steps to have common terms of use for all its websites, due to differences in local laws this may not always be possible. Please be aware that other websites may have different terms of use, so always check the terms of a particular website before starting using it.

This Website contains various information in written, visual, and audio format. In particular vacation/travel reports and pictures taken/written by tourists/travellers and hotel guests are released. The Website also contains videos and video clips uploaded by tourists and travellers, as well as content from hotel management companies in the form of pictures and hotel news.

Any user may visit the Website to gain information without charge and may also participate by inserting a hotel review, by inserting/uploading pictures of his/her holiday, as well as videos of his/her holiday, and/or by writing a bulletin point entry/posting ("Content").

Furthermore, it is also possible to take advantage of special offers and place bookings for a variety of accommodation and travel. Such offers and services are always subject to separate terms and conditions. For a copy of our terms and conditions of purchase, please go to the bottom of this page.

### II. User Conduct

#### 1. General terms

By using this Website you agree that you are at least 14 years old. Please also note that in order to place a booking or to upload Content on the Website you must be at least 18 years old.

You shall not make any statements about yourself or any other person which are false or capable of being misunderstood. In particular, you shall not log on under a false identity. This does not apply to our interactive forums where we recommend that an alias is used in order to protect your privacy.

It is a condition of your use of this Website that you shall not upload any content that:

- is deliberately or negligently not true;
- is abusive, threatening, inflammatory, offensive, defamatory, coercive, obscene, belligerent, glorifying violence, vulgar, sexually explicit, pornographic or otherwise objectionable;
- is racist, promotes illegal activity, incitement of the masses, bigotry or hatred;
- violates or infringes any applicable law;
- you are not authorized to propagate;
- contains viruses, corrupted data or other harmful, disruptive or destructive files;
- is unrelated to the area of the Website where it is posted; or contains unauthorised links or similar entities or is capable of interfering with the functioning of foreign data processing equipment/installations, in particular computers.

Please note that HolidayCheck AG does not edit or control the content posted to or distributed on the Website. However, in the event that any user violates any of the above restrictions or the following terms concerning the posting or uploading of Content (especially with regard to holiday/hotel reviews), HolidayCheck AG reserves the right to delete, modify or add content without prior or later notice and without explanations and/or reason. In particular, please note that we will strive to delete illegal content immediately after we discover it. We also reserve the right to either temporarily or permanently suspend your use of the Website, where you are in breach of these terms and conditions of use.

## 2. Grant of rights -

By posting or uploading Content to the Website you agree that you have full rights and authority to do so and have obtained any necessary approvals and consents from third parties where applicable. You acknowledge and agree that your Content is non-confidential and non-proprietary. You hereby grant HolidayCheck AG and its affiliates a free of charge, irrevocable, permanent, transferable, fully sub-licensable and worldwide right to use your Content in any form and in any medium which is now known or devised at a later date (including but not limited to print, on the internet (including other websites of HolidayCheck AG, television and mobile communication platforms). This includes in particular the right to reproduce, distribute, modify, translate, create derivative works of, publish and publicly make available the Content.

You permit us to use your name which you provide to us alongside any Content you submit and acknowledge that HolidayCheck AG may choose to provide attribution of your comments or reviews at our discretion. You agree to Content being moved to different parts of the Website and/ or pictures being compressed for clarity and better visual arrangements.

You grant HolidayCheck AG the right to take legal action against any person or entity that violates yours or our rights in the Content by a breach of these terms of use. Please note that if you violate one or more of these terms of use, you will hold us harmless to the full extent of any claims by any third party.

### 3. Additional special terms for posting, transmitting, or uploading of hotel reviews/holiday reports/pictures/videos/cruise reviews

Any effort to disrupt, destroy, limit or otherwise negatively influence or modify the intended functionality of the Website is prohibited. In particular you shall not (and shall not attempt to) bypass security functions or modify computer systems, servers, routers or any other equipment connected to the internet, or gain unauthorized access, or disrupt the functioning of any of our systems and equipment.

Furthermore you agree:

- to describe hotels and places as accurately as possible and in particular to add all parts of the name and further information necessary for their identification, especially in respect of hotel chains;
- to only rate a hotel/resort and or upload a picture if you have spent time in the specific hotel/resort and/or have used the service;
- that you will not provide a report, comment or upload a picture in respect of hotels or resorts where you are an employee, owner or operator at the hotel or resort or connected to it in any other similar way, for example if you are a relative of anybody connected with the hotel or resort. This restriction also applies to workers of travel agencies or of shipping companies and their relatives;
- not to give any false or misleading ratings or false statements concerning staff, holiday makers, leisure facilities, hotels, resorts, and cruises which could have an effect on the decision of other people willing to travel to a particular destination or use a particular service;
- to give negative as well as positive reports within the boundaries of freedom of speech for the purpose of giving other people who are willing to travel and use a connected service the possibility for an objective, meaningful and comprehensive insight into a destination, region, hotel, resort, service and its/their circumstances. The same principles apply to any uploading or posting of videos and pictures;
- to rate, comment and report pursuant to the best of your knowledge;
- not to collect, assemble, and/or publish in any way other users' personal data and/or other information.

### 4. Further specific terms and conditions governing the use of contact forums and messaging via the private mailing system

You agree that where you contact us and any third parties by using the Website, its private message system and/or a contact forum, you will not write or send any content which:

- is abusive, threatening, offensive, defamatory, coercive, obscene, belligerent, glorifying violence, vulgar, sexually explicit, pornographic or otherwise objectionable and/or actionable/illicit;
- is contrary to any applicable law, especially violates third parties' intellectual property rights;
- is commercial advertisement or any other undesired advertisement (e.g. spam), and
- is otherwise in breach of any other part of these terms and conditions of use.

HolidayCheck AG retains the right to temporarily or permanently ban any user/s who are in breach of these or any other part of these terms and conditions.

#### 5. Access for hoteliers and Hotelier picture upload

A manager or other suitably senior person in charge of a hotel may write news and hints concerning his hotel, or upload pictures and offer these to users at HolidayCheck. Thus interested holiday makers can gain important extra information about a hotel, alongside to hotel reviews. This service is free of charge.

#### 6. Access and conditions for Card Partners

In cooperation with local businesses in some countries ("Card Partners"), HolidayCheck AG provides a so called "HolidayCheck Card" service, by which Card Partners offer discounts, reductions and extra services to HolidayCheck Card holders ("Extras").

Card Partners should register in the corresponding area of the Website and communicate all the necessary information about their Extras to HolidayCheck AG.

Card Partners are responsible for legality and validity of their Extras as well as honouring the terms of such Extras. Card Partners shall indemnify and hold HolidayCheck AG harmless for and against any claims from a third party in this respect.

Extras may be stated in German, English or Spanish. HolidayCheck AG may translate Extras into German or any other language and modify Extras before they will be published on the Website or other Websites of HolidayCheck AG.

Once Extras are online, Card Partner will receive a notification e-mail. Card Partner must then provide a final check of the text to be published and shall report anything incorrect to HolidayCheck, in particular any incorrect translation of Extras. If Card Partner fails to report any error it will remain responsible for any liability which results from that failure.

We will only publish Extras which include at least a 10% price-reduction, or a service corresponding to that value, to customers with the HolidayCheck Card.

The HolidayCheck Card is personalised with the name and customer number. The card is transferable and may therefore be used by people other than the card-owner. By providing Extras, Card Partner is obliged to grant Extras to any HolidayCheck Card holder. Extras must remain valid for 30 days. After 30 days Extras may be withdrawn or amended.

HolidayCheck AG reserves the right to inquire Card Partner, if a HolidayCheck Card holder should not receive Extras. In case of substantial user-complaint Card Partner will need to provide the evidence of having granted the advantage. HolidayCheck AG reserves the right to suspend Card Partner temporarily or permanently from the Website, in the event that it repeatedly fails to honour Extras which it has promised to users. In addition, HolidayCheck AG reserves the right to limit or end any Extras or end any Card Partner's association with the advantage program for any reason by providing 30 day notice.

### III. Things to keep in mind when viewing Content

Hotel reviews, reports, ship reviews, holiday pictures, pictures of hotels, holiday videos and related Content which are available through the Website originate from third parties. Reports and reviews by any user represent the opinion of the respective third party user. Such reports and especially pictures and videos are “snapshots”. If some time has passed since the posting, transmission, or uploading of Content it should be borne in mind that circumstances, hotels and resorts etc. might have changed. The quality of an assessment of a hotel or resort may depend on the quantity of available reports and reviews. A single picture or review is not usually capable of providing a complete impression of the situation and may only represent, for example, small parts of a hotel or surrounding area.

Furthermore, the content of a report or review may vary depending on the age of respective persons, their interests and the purpose of their visit (relaxation, sports, nightlife, exploration, business trip), and if people are travelling on their own, in a group or as a couple. A group of young people may not appreciate a hotel which welcomes families or is very peaceful and calm, and it may not appeal to a business traveller if there is a lot of entertainment for the guests at a hotel.

Also, travellers’ nationality, the frequency of their holidays and travelling and previous experiences in different countries may have an impact. It should be taken into consideration that each and every traveller may have different expectations about what constitutes good service, cleanness and neatness, quality of food and friendliness of staff.

Remember that in some culturally diverse countries the local hotels and resorts will often have different standards as for example European ones.

PLEASE BE AWARE THAT BY PROVIDING INFORMATION ABOUT A DESTINATION, WE ARE NOT SUGGESTING THAT TRAVEL TO SUCH PLACES IS ADVISABLE OR RISK FREE. WE ARE NOT LIABLE FOR DAMAGES OR LOSSES THAT MAY RESULT FROM YOU DECIDING TO TRAVEL TO SUCH DESTINATIONS.

### IV. Liability and Disclaimer

HolidayCheck AG does not guarantee or warrant the completeness, correctness, accuracy or quality of any Content. This disclaimer also applies to the “travel checklist” and the “Newsletter”.

On this basis, we would recommend that you should get in touch with authorities, embassies, tourist information desks and other applicable institutions in order to help verify the accuracy of the Content. In particular, you should do this in relation to matters such as health, for example health certificates and vaccination and any issues concerning passports and visas.

Content concerning travel services, prices and taxes has been provided to HolidayCheck AG by travel agencies and/or related service institutions. Consequently, HolidayCheck AG cannot guarantee the correctness, completeness, accuracy or quality of such Content.

Please note that user Content represents the views of the individual user and does not represent a statement, opinion recommendation or rating by HolidayCheck AG.

By using the Website and content you agree to use it at your own risk.

Although HolidayCheck AG does not have any responsibility for any mistakes which are made by either you or travel agencies when making a booking, we will do what we can to help. Where you become aware of a problem, please contact us as fast as possible at: [info@holidaycheck.com](mailto:info@holidaycheck.com).

On this basis, HolidayCheck AG does not guarantee uninterrupted availability of any content and use of the Website itself. HolidayCheck AG expressly reserves the right to block, modify, add to and/or delete all or part of the Website, or any of its other websites, whether temporarily or permanently.

You are responsible for ensuring that you have the necessary IT equipment to use the Website. The Website has been optimized for Mozilla Firefox and Internet Explorer version 05.

HolidayCheck AG cannot guarantee or warrant that the Website is free of viruses, worms, Trojan horses or any other malicious codes which could have a destructive, vitiating, disruptive or other negative impact.

It is your responsibility for making sure you sufficiently protect your PC from viruses.

NOTHING IN THESE TERMS OF USE SHALL LIMIT OR EXCLUDE OUR LIABILITY (IF ANY) TO YOU FOR: A BREACH OF YOUR CONSUMER RIGHTS; FRAUD OR FRAUDULENT MISREPRESENTATION; PERSONAL INJURY OR DEATH RESULTING FROM OUR NEGLIGENCE; OR ANY OTHER MATTER FOR WHICH IT WOULD BE ILLEGAL FOR US TO EXCLUDE, OR ATTEMPT TO EXCLUDE OUR LIABILITY.

#### V. Trademarks, intellectual property, copyright

We are the owner or the licensee of all intellectual property rights (copyright, trade marks, patents, design rights etc.) in our Website, and in the content published on it. Any content published on the Website (e.g. software, products, trademarks such as logos etc., information, reports, pictures and graphics) is protected by national and international laws and agreements. Any kind of copying, duplication, distribution, commercial exploitation, modification, adding and/or deletion is prohibited, including the integration of any content on external websites, for example through interlinks, deeplinks, or frames.

Any user may apply for the right to use content originating from HolidayCheck AG by contacting us at [info@holidaycheck.com](mailto:info@holidaycheck.com). For more information please read details of our special partner program at [www.openholidayguide.net](http://www.openholidayguide.net).

You are permitted to make a single copy of content for private, non commercial use, provided that the source remains identifiable, for example by use of a reference.

You are not permitted to use any data mining, robots, scraping or similar data gathering or extraction methods on the Website.

In case you suspect that any content available on the web page violates your intellectual or other property rights, please contact us as soon as possible by e-mail at: [info@holidaycheck.com](mailto:info@holidaycheck.com). We will try to resolve your issue as fast as possible and in the most cost-efficient manner, although we cannot provide any guarantees. In particular, our aim is to clarify each situation directly with the user without a need for using lawyer as an intermediary.

## VI. Compensation

You agree to defend and fully compensate HolidayCheck AG and its affiliates and any of their officers, directors, employees and agents from and against any claims, causes of action, demands, recoveries, losses, damages, fines, penalties or other costs or expenses of any kind or nature, including but not limited, to reasonable legal and accounting fees, brought by third parties as a result of:

- (i) your breach of these terms of use or the documents referenced herein;
- (ii) your violation of any law or the rights of a third party; or
- (iii) your use of this Website.

## VII. Privacy policy

Data protection is an important subject to HolidayCheck AG. Any personal data, which you provide by using the Website, is used in accordance with applicable data protection regulations and our privacy policy.

Please [click here](#) to see our privacy policy

## VIII. Modification of terms of use

HolidayCheck AG reserves the right to modify or supplement these terms of use for regulatory, legal, technical or any other reason with future effect by placing an advance notice on the Website. The notice will include the date of planned change and the consequences for users. Registered users of myHolidayCheck will get additional information about planned change of terms of use via e-mail. By using the Website you consent to be bound by the current version of the terms and conditions of use.

## IX. Governing law and Forum

These terms of use shall be governed by the laws of Switzerland. This does not apply where there is a conflict with Swiss or internationally compelling laws for consumer protection or international agreements. User and HolidayCheck AG agree to submit to the exclusive jurisdiction of the courts located within the kanton Thurgau, Switzerland.

Where the user is (i) a trader (ii) its place of residence is outside the EEA , such a user and HolidayCheck AG agree to submit to the exclusive jurisdiction of the courts located within the kanton Thurgau, Switzerland. This also applies to passive lawsuits.

#### X. Severability clause

If any part of these terms is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remaining provisions of these terms of use shall continue in effect.

Bottighofen, 14th March 2011