

## **M.V. AVALON SCENERY**

### **IMPORTANT NOTICE**

THESE ARE THE TERMS AND CONDITIONS THAT APPLY TO THE CONTRACT OF CARRIAGE BETWEEN YOU AS THE PASSENGER AND RIVER SERVICES GMBH, NAUENSTRASSE 63A, 4002 BASEL, SWITZERLAND, AS CARRIER WITH RESPECT TO THE M.V. "AVALON SCENERY".

THE COMPANY ENTERS INTO CONTRACTS OF CARRIAGE, ISSUES ALL CONTRACTS, AND ACCEPTS AND CARRIES PASSENGER AND BAGGAGE ONLY ON AND SUBJECT TO THESE TERMS AND CONDITIONS. THIS CONTRACT IS AN AGREEMENT BETWEEN PASSENGER AND THE COMPANY, AND THE AGENTS, SERVANTS AND EMPLOYEES OF THE COMPANY. THE LIABILITY OF THE COMPANY TOWARDS PASSENGER IS LIMITED BY OPERATION OF LAW AND BY OPERATION OF THESE CONDITIONS. SECTIONS 5, 6, 9, 10, 13 AND 14 OF THESE TERMS AND CONDITIONS CONTAIN CERTAIN LIMITATIONS OF THE COMPANY'S AND THIRD PARTIES' LIABILITY, INCLUDING LIMITATIONS CONCERNING DEATH OR INJURY CLAIMS, AS WELL AS DAMAGE CLAIMS RELATING TO BAGGAGE AND PERSONAL PROPERTY. YOU THEREFORE SHALL ENSURE THAT YOU ARE PROPERLY INSURED AGAINST ALL RISKS THAT YOU AND YOUR BELONGINGS MAY INCUR.

BY BOARDING OUR SHIP, YOU AGREE TO ACCEPT AND TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS WHICH FOLLOW, INCLUDING SPECIFICALLY THOSE REGARDING YOUR RIGHTS TO SUE, GOVERNING LAW, FORUM AND JURISDICTION.

THANK YOU FOR TAKING THE TIME TO FAMILIARIZE YOURSELF WITH THESE TERMS AND CONDITIONS.

### **CONDITIONS APPLICABLE TO THE CONTRACT**

#### **1. DEFINITIONS:**

"Baggage" means all such Passenger baggage allowed on the Vessel pursuant to the terms of this Contract which is placed in Passenger's cabin, or which has been stored in the Vessel's baggage room, holds or safe against receipt therefore at the request of Passenger.

"Booking" means the booking by the Passenger of a Cruise on board the Vessel.

"Company" means River Services GmbH of Nauenstrasse 63A, 4002 Basel, Switzerland.

"Conditions" means these terms and conditions.

"Contract" means the booking confirmation and the contract for a Cruise on board the Vessel resulting from a booking, including these Conditions, as concluded between Company and Passengers.

"Conventions" means the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, 1974, and the Protocols thereto of 1976 and 1990, and, where applicable, the Strasbourg Convention on the Limitation of Liability in Inland Navigation, 1988.

"Cruise" means a trip of a number of days and/or a specific itinerary contracted by Passenger with Company.

"Dangerous articles" include articles such as firearms, explosives, oxygen or inflammable or combustible substances, alcohol, drugs, illegal substances, or other dangerous goods.

"Passenger" means every person named on the face of this Contract and/or travelling under this Contract or occupying the cabin designated on this Contract, including their heirs, successors in interest and personal representatives.

"Valuables" includes but is not limited to jewelry, money, bullion, precious metals or stones, plate or other objects of a rare or precious nature, bonds, securities, negotiable and financial instruments and/or tickets.

"Vessel" means the river cruise ship "Avalon Scenery" or any substitute ship chartered or operated or provided by Company, whether owned chartered, or operated by the Company or by third parties on which Passenger may be travelling, and its tenders or any other similar means of conveyance.

## **2. NON-TRANSFERABILITY/BINDING EFFECT:**

The Contract is valid only for Passenger or Passengers named herein for the Cruise, date and Vessel indicated. It may not be sold or transferred. The terms and conditions of the Contract are binding on, and confer benefits to Passenger, Passenger's spouse, heirs, executors, administrators, personal representatives, dependents and next of kin. Passenger represents and warrants that she/he is duly authorized by and on behalf of all Passengers (including minor children) named on the Booking to agree to and to bind all such Passengers to these terms and conditions.

## **3. EMBARKATION:**

Passenger is required to be on board the Vessel at least one hour before the initial scheduled departure time of the Cruise and any departure time subsequently announced during the Cruise. At the time of embarkation Passenger is responsible for having received all medical inoculations necessary for the Cruise and having in his/her possession the Contract and/or Booking confirmation, valid passport, visas, medical card and other documents necessary for scheduled ports of call and disembarkations. Company shall have no liability to Passenger whatsoever if Passenger is not on board prior to the Vessel's departure.

## **4. BAGGAGE, VALUABLES AND OTHER POSSESSIONS:**

Due to space limitations, each Passenger may bring aboard the Vessel one (1) suitcase without charge. All Baggage must be securely packed and distinctly labeled with Passenger's full name, the name of the Vessel, and the cabin number of Passenger and the sailing date of the Vessel. Under no circumstances, may Dangerous Articles be taken aboard the Vessel. Any such item shall be surrendered to the Captain of the Vessel at embarkation, and may be disposed of in the sole discretion of the Captain. Pets and other animals including Seeing Eye dogs are not allowed on board the Vessel. Hand or unlocked luggage, breakables and Valuables must be hand-carried by Passengers on and off the Vessel, and may not be included with check-in Baggage. Company shall not be responsible for loss or damage to such items and shall not be responsible for goods that Company would not have allowed on the Vessel, had it known of the existence thereof.

## **5. LIABILITY LIMITATIONS FOR LOSS OF AND/OR DAMAGE TO PROPERTY:**

The total value of the Baggage, Valuables and other personal belongings of a Passenger aboard the Vessel who does not deposit Valuables for safekeeping, as described in this Contract, shall be deemed not to exceed the amount of SDR 1,800 per Passenger, and Company's liability, if any, for loss of or damage to such belongings is limited to a maximum of SDR 1,800 per Passenger. Company provides safekeeping for Valuables aboard the Vessel either in the Passenger's cabin or at the front desk. Company encourages Passengers to deposit any Valuables brought aboard the Vessel with the designated officer who will issue a receipt for such Valuables or use the safe in the Passenger's cabin. Company shall not be liable for any loss of or damage to Valuables unless they have been delivered to the designated officer and a receipt issued. The value of articles delivered for safekeeping shall be deemed not to exceed SDR 2,700 unless Company agrees in writing to a higher value for the articles at the time of delivery to the designated officer. Unless specifically provided elsewhere in this Contract, Company shall have no liability for loss or damage to Baggage or personal effects. Personal belongings lost while unattended in public lounges or other public areas, whether on board the Vessel or elsewhere, are not reimbursable. Losses due to ordinary wear and tear, perils of the sea, and other acts-of-God are not reimbursable. Settlements of reimbursable claims for lost belongings will be made on the basis of actual cash value (replacement cost less depreciation). Settlements of reimbursable claims for damaged items will be on the basis of cost of repair or actual cash value, whichever is less. No amount shall be paid in settlement of any claim without proof of the actual cash value or repair cost as appropriate arising from the loss or damage. Such proof must be sent to Company. Company liability must be proven before any settlement will be paid.

## **6. COMPANY'S LIABILITY/TIME LIMITS FOR PROPERTY DAMAGE AND PERSONAL INJURY CLAIMS:**

(a) The provisions and limitations as contained in the laws of Switzerland (incorporating the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, 1974, the "Athens Convention") and the protocols thereto of 1976 and 1990 and the Strasbourg Convention on the Limitation of Liability in Inland Navigation, 1988 (the "CLNI Convention") apply.

(b) Company shall be liable only in accordance with the provisions and limitations as contained in the laws of Switzerland (incorporating the Athens Convention and the CLNI Convention). Swiss law in most cases limits Company's liability for death, personal injury to no more than SDR 175,000 (one hundred seventy-five thousand) per passenger, and for lost or damaged property to no more than SDR 1,800 (one thousand eight hundred) per passenger.

(c) Company shall have the right at all times to avail itself of and have the benefit of any and all applicable global limitation of liability or exoneration of liability rules, regulations or statutes, specifically including the provisions of the Strasbourg Convention on the Limitation of Liability of owners of Inland Navigation Vessels (CLNI), 1988, as adopted by Switzerland, as well as of the International Convention on Limitation of Liability for Maritime Claims, 1976, with revisions and amendments, if and as applicable, and by those other and further limitations of liability set forth in the statutory and general maritime law of Switzerland, as the law governing the contract: 60.000 (Sixty thousand) units of account (also known as Special Drawing Rights, or S.D.R.'s) multiplied by the number of Passengers the Vessel, according to its certificate, is allowed to accommodate; not to exceed in any event more than 25 (twenty-five) million units of account, to apply to the aggregate of all claims which arise on any distinct occasion against carrier, with respect to damages suffered on a seagoing vessel and, as regards damages suffered on an inland navigation vessel, not to be less than 720,000 (seven hundred twenty thousand) units of account and not to exceed (i) 3 (three) million units of account for vessels with an authorized passenger transport capacity of not more than 100; (ii) 6 (six) million units of account for vessels with an authorized passenger transport capacity of not more than 180; and (iii) 12 (twelve) million units of account for vessels with an authorized passenger transport capacity of more than 180. A copy of the Athens convention and CLNI will be provided by Company upon written request.

(d) In accordance with the afore mentioned legislation it is presumed that luggage has been delivered undamaged unless written notice is given to Company: (i) in the case of apparent damage, before or at the time of disembarkation or redelivery; or (ii) in the case of loss or non-apparent damage, within 15 days of the date of disembarkation or re-delivery or from the time when redelivery should have taken place.

(e) Under the aforementioned legislation any action for damages arising out of personal injury, death, or lost or damaged luggage shall be time-barred after a period of two (2) years. The limitation period shall be calculated as follows (i) in the case of personal injury, from the date of disembarkation of Passenger; (ii) in the case of death, from the date when Passenger should have disembarked or the date of death, whichever is later; (iii) in the case of lost or damaged Luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

(f) In no case shall an action be brought after the expiration of a period of three years from the date of disembarkation of Passenger or from the date when disembarkation should have taken place, whichever is later.

(g) Company shall not be liable for lost or damaged Valuables, except where such Valuables have been deposited with Company against receipt for the purpose of safekeeping in which case Company shall be liable up to the limit as provided for in Swiss law, i.e. SDR 2,700.

(h) Where any of the Conventions permit Company to apply a deductible, Company may apply that deductible.

(i) In the event it is determined that Company is not entitled to all of the benefits of the Conventions, including the limitations stated above, Passenger may not maintain a lawsuit against Company or the Vessel, nor will Company or the Vessel be liable, for loss of life or bodily injury unless written notice of the claim is delivered to Company not later than six (6) months after the day of death or injury, the lawsuit is commenced not later than one (1) year after the day of death or injury, and valid service of the lawsuit on Company or the Vessel, as applicable, is made within thirty (30) days following the expiration of that one-year period. For all other claims, including but not limited to claims for loss or damage to Baggage, breach of contract, or other claim, Passenger may not maintain a lawsuit against Company or the Vessel, unless Company is provided with written notice of claim within thirty (30) days after the date of disembarkation, the lawsuit for such claim is commenced not later than one year after the date of disembarkation, and valid service of the lawsuit on the Vessel or Company, as applicable, is made within thirty (30) days following the expiration of that one-year period. In the case of a claim by or on behalf of a minor or legally incompetent person, the time periods described above shall begin to run on the earlier of: (i) date of appointment of a legal representative for the minor or legally incompetent person, or their estate

(as the case may be); or (ii) three (3) years after the date of death, injury or damage, as applicable.

(j) Certain third parties derive rights and exemptions from liability as a result of the terms and conditions stated herein. All of Company's rights, exemptions from liability, defenses and immunities under this Contract (including, but not limited to, those arising under this Section 6 or applicable law) inure to the benefit of Company's employees and agents, together with the Vessel and the Vessel's tenders, operators, managers, charterers, officers, staff, crewmembers, shipbuilders and manufacturers of all component parts. These third parties will have no liability to Passenger, either in contract or in tort, which is greater than or different from Company's liability.

(k) If a written claim is not made and suit is not commenced within the time provided in this Section 6, then Passenger claims will be extinct, and Passenger waives and releases any right she/he may have to make a claim against Company for any such damage, bodily injury, emotional distress or injury or death or loss.

#### **7. ITINERARY/RIGHT TO CHANGE/DETENTION:**

Company will make every reasonable effort to undertake the advertised and any other agreed and offered Cruise but no Cruise is guaranteed and Cruises may be altered, delayed, amended, or cancelled subject to circumstances. If the performance of the proposed Cruise is hindered or prevented (or in the opinion of Company is likely to be hindered or prevented by war (whether declared or not), hostilities, terrorist action or threat thereof, blockade, weather condition, high or low water levels, ice, labor conflicts, breakdown of the Vessel, congestion, lock operational malfunction, docking difficulties or any other cause whatsoever or if Company considers that for any reason whatsoever, proceeding to, attempting to enter, or entering or remaining at the place of disembarkation may expose the Vessel to risk of loss or damage or to be likely to delay her, Passenger and his property may be landed at the place of embarkation or at any place which Company or the Captain of the Vessel in his or her discretion may reasonably decide upon, at which place the responsibility of Company shall cease and this contract shall be deemed to have been fully performed, or if Passenger has not embarked, Company may cancel the proposed Cruise and shall refund Passenger money or fares paid in advance. Company reserves the right at its sole option and discretion, without any liability for damages or refund, of any kind to deviate from the Vessel's advertised or ordinary itinerary or route, to delay, advance or lengthen any Cruise, to omit or change ports of call, to arrange for substantially equivalent transportation by another vessel and/or by other means of transportation, including without limitation by coach or other land transportation alternatives, whether belonging to Company or not, and to cause Passenger to disembark from the Vessel temporarily or permanently. Company may for any reason whatsoever cancel any Cruise or terminate the Contract at any time before departure of the Vessel, and in such event, Company's only liability will be to refund to Passenger the amount it has received for the Contract. For purposes of assisting other vessels or protecting life or property, the Captain of the Vessel has the right, at his or her sole discretion, to deviate from the Vessel's advertised or ordinary itinerary or route, to delay, advance or cancel any Cruise, to omit or change any ports of call, to tow or to be towed, to transfer Passenger and Passenger's baggage to any other vessel and or other means of transportation whether belonging to Company or not, cause Passenger to disembark the Vessel temporarily or permanently, and Passenger shall have no claims against Company in such circumstances.

#### **8. HEALTH AND SECURITY/INDEMNIFICATION BY PASSENGER:**

Passenger represents and warrants that Passenger is physically and otherwise fit to travel; that she/he will at all times comply with Vessel's rules and regulations and orders and directions of the Vessel's officers and staff; that his/her conduct will not impair the safety of the Vessel or inconvenience other passengers. Company and the Captain of the Vessel, without liability, at any time, may refuse to transport or may land any Passenger at any port or place, or transfer Passenger to other means of transportation because of health or physical condition, mental disorder, failure to abide by Vessel regulations, failure to possess necessary passports, visas and health or vaccination certificates, or other causes rendering Passenger unfit to travel on the Vessel. If Passenger is refused passage or leaves the Vessel prior to the End of the Cruise for any of the reasons described in this section or for other reasons including, but not limited to, personal, medical, or business reasons, Company will not be required to refund any portion of the Contract price, or be responsible for any of Passenger's cost. Passenger hereby consents to a reasonable search being made of Passenger's person, baggage or other property, such search to be carried

out in his/her presence and if that is not possible in the presence of two persons not employed or otherwise contracted by Company in the performance of its duties and to the removal and confiscation or destruction of any object which may, in the opinion of Company, impair the safety of the Vessel or inconvenience other Passengers. Passenger shall indemnify Company for all penalties, fines, charges, losses or expenses incurred or imposed upon Company or the Vessel by virtue of any act or violation of law by Passenger.

#### **9. PASSENGER RESTRICTIONS:**

Company does not discriminate against persons on the basis of disability. Company is unable to accommodate women past their sixth month of pregnancy and children less than 8 (eight) years of age. Any child under the age of eighteen must be accompanied by an adult over the age of twenty-one, and must share the adult's accommodation. If the accompanying adult is not a parent, a "Parental Consent Guardianship Form" must be signed by a parent or legal guardian of the child and received by Company prior sailing. Passenger is required to advise Company in writing, at or prior to the time a Cruise is booked, of any physical, emotional or mental condition which may require professional attention during the Cruise. The Vessel is not able to accommodate motorized wheelchairs. Passengers with mobility impairments must be accompanied by someone who is able to assist Passenger, on shore and on board the Vessel, and is responsible for providing Passenger all necessary aid and facilities, if any such condition arises after the Cruise is booked, Passenger is required to advise Company in writing immediately. Company and all personnel aboard the Vessel shall have no liability to Passenger relating to such condition or its treatment.

#### **10. INDEPENDENT CONTRACTOR/SHORE TOURS/LIMIT OF LIABILITY:**

Company makes no representations concerning and has no responsibility for tours, including, without limitation, shore excursions, hotels, restaurants and transportation, whether by vessel, air, rail, land or other means, not owned or operated by Company. Company shall have no obligation or liability of any kind to Passenger for acts or omissions in connection with or arising out of arrangements with independent contractors. Arrangements with independent contractors include, but are not limited to the following: (1) airline and surface transportation; (2) services or products available for Passenger's convenience aboard the Vessel; (3) services, products or transportation provided other than aboard the Vessel furnished by others, including without limitation, sight-seeing tours, pre-cruise and post-cruise tours, excursions, shore trips and tender service, whether arranged or organized by tour operators, travel agents, booking agents or Company. The Passenger's agreements with independent contractors are not covered by this Contract and shall be subject to the terms and conditions of Passenger's agreements with such carriers and independent contractors, whether or not any products sold, services tendered or transportation provided to Passenger is arranged directly or through Company or its booking agents. Passenger agrees that all rights, exemptions from liability, defenses and immunities of whatsoever nature referred to in the Contract applicable to Company or the Vessel, shall in all respects inure also for the benefit of any servant, agent or independent contractor of Company acting in the course of or in connection with their employment so that in no circumstances shall any such servant, agent or independent contractor, as the result of so acting, be under any liability to any such Passenger different from that of Company.

#### **11. NO LIABILITY FOR MEDICAL TREATMENT:**

No staff doctors or nurses are employed by Company on the Vessel. If Passenger requires medical attention during the Cruise, medical services will be provided at local facilities. Passenger shall be responsible for all costs and expenses of medical services, treatment and medications. Company shall have no liability whatsoever for any costs incurred in connection with medical services, or for the quality of care Passenger receives. Passenger consents to treatment by medical professionals designated by Company, if Passenger is unable to request or authorize medical treatment and, in the opinion of the Vessel's officer, medical attention is necessary, solely at the expense of Passenger and without liability to Company.

#### **12. PAYMENT BY PASSENGER AND EXTRA EXPENSES:**

Any and all payments by Passenger to Company shall be made in currency of EURO or such other currency acceptable to Company. All charges for services and products provided on board the Vessel must be settled in cash or charged (via credit card acceptable to Company) before

Passenger's final disembarkation from the Vessel. Any other expenses incurred by Passenger or by Company on behalf of Passenger shall be payable by Passenger on demand.

**13. LIABILITY LIMITATION FOR LOSS OF LIFE OR BODILY INJURY:**

If Passenger is injured, becomes ill, or dies, or Passenger's property is lost or damaged, or Passenger and/or his/her property are delayed, Company will not be liable to Passenger for any damages unless the occurrence was due to the negligence or willful fault of Company itself. Company disclaims liability to Passenger under any circumstances for infliction of emotional distress, mental suffering or psychological injury which was not: (i) the result of physical injury to Passenger caused by the negligence or fault of a crewmember or the manager, agent, master, owner or operator of the Vessel; (ii) the result of Passenger having been at actual risk of physical injury, and such risk was caused by the negligence or fault of a crewmember or the manager, agent, master, owner or operator of the Vessel; or (iii) intentionally inflicted by a crewmember or the manager, agent, master, owner or operator of the Vessel. In no event will Company be liable to Passenger for consequential, incidental, exemplary or punitive damages. In addition to all of the restrictions and exemptions from liability provided in this Contract, the liability of Company for the death of or personal injury (including emotional distress or injury) to a Passenger shall in no event exceed the monetary limitations set forth in Article 118 of the Swiss Act on Maritime Navigation and the Athens Convention and its Protocols of 1976 and 1990 to which such article refers, together with Article 127 of the same Act. Nothing in the Contract is intended nor shall operate to limit or deprive Company of any such statutory limitation of or exoneration from liability, or of the benefits of any statute or law of any country which might be applicable providing for exoneration from or limitation of liability.

**14. FORCE MAJEURE:**

Company shall not be liable in any way to Passenger for death, bodily injury, illness, damage, delay or other loss or detriment to person or property or for Company's failure to commence, perform and/or complete any duty owed to Passenger if such death, delay, bodily injury (including emotional distress or injury), illness, damage or other loss or detriment to person or property is caused by Act of God, war or war-like operations, terrorist activities, civil commotions, labor difficulties, whether or not Company is a party thereto, interference by authorities, requisitioning of the Vessel, political disturbance, inability to secure or failure of supplies, perils of the sea, collision, foundering of the Vessel, explosion, breakdown or failure of or damage to the Vessel or its hull, machineries or fittings, weather conditions, high or low water levels, lock malfunction, that may arise or be caused by, riots, insurrection and government restraint, fire, or any other cause whatsoever beyond the reasonable control of Company.

**15. CHOICE OF LAW:**

The Contract is considered to be issued at Basel, Switzerland.

The law governing all aspects of these Terms and Conditions is stipulated AND AGREED to be the statutory and general LAW OF SWITZERLAND, with references to which these Terms and Conditions are made.

**16. CHOICE OF FORUM:**

Any dispute arising out of or in connection with the booking, the contract (including these Terms and Conditions), the ownership and/or the operation of the vessel, whether against Company in person or the Vessel, shall be determined by the civil court in Basel, Switzerland ("Zivilgericht Basel-Stadt"), to the jurisdiction to which company and passenger and all persons in passenger's party hereby submit themselves, and to the exclusion of the jurisdiction of the courts of any other country.

If any action is initiated in any court other than the court of Basel, Switzerland, company and passenger and all in passenger's party agree to the immediate transfer of said action to the courts of Basel, Switzerland. Any attorney's fees and/or costs incurred in successfully transferring an action brought in any venue other than Basel, Switzerland shall be awarded to the party procuring the transfer and shall become due and payable at the time of the transfer.

**17. INTERPRETATION:**

Should any provisions of the Contract be contrary to or invalid by virtue of the law of any jurisdiction or be so held by a court of competent jurisdiction, such provision shall be deemed to be

severed from the Contract and of no force and effect and all remaining provisions herein shall continue to be in full force and effect. The headings of these Conditions are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. Whenever the context so requires, references to the male gender shall include references to the female, and references to the singular shall include the plural and vice-versa.

**18. WARRANTIES/PERIOD OF RESPONSIBILITY/CONSEQUENTIAL DAMAGES EXCLUDED:**

All warranties including warranties of fitness for use and merchantability are expressly excluded from the Contract. Company shall under no circumstances be liable for delay or for any indirect, special or consequential damages. The liability of Company is limited to the time that Passenger or Baggage is actually on board the Vessel. Company therefore does not accept any liability when Passenger or Baggage is not on board.

**19. WRITTEN NOTICES:**

Except as otherwise expressly provided in the Contract, all written notices required by this Contract must be mailed, postage prepaid to: River Services GmbH, Nauenstrasse 63A, 4002 Basel, Switzerland.

**20. ENTIRE AGREEMENT:**

The Contract (including these Conditions) together with the Booking confirmation represent the entire agreement and a binding contract between Passenger and Company. Passenger's acceptance of the Booking constitutes Passenger's consent to the provisions of the Contract (including these Conditions). These Conditions supersede any oral or written representations. Any change in these Conditions must be in writing and signed by the President of Company and may require a commensurate increase in fare.