

**topbonus – Conditions of Membership**  
**dated 05/05/2015**

The topbonus frequent flyer program rewards its customers for their loyalty. Membership of the topbonus Program is based on these topbonus Conditions of Membership. Further conditions and additional information will be found in complementary terms and conditions associated with the Program (e.g. General Terms and Conditions of Business for the topbonus Credit Cards), as well as – for example – the topbonus account balance or online at [www.airberlin.com/topbonus](http://www.airberlin.com/topbonus)

**1. Membership**

The operator and issuer of topbonus is topbonus Ltd., Zweigniederlassung, Saatwinkler Damm 42-43, D-13627 Berlin (hereinafter referred to as “topbonus Ltd.”).

**1.1. Membership entitlement:** Only individual, natural persons over the age of two and resident in Germany, or another country in which the topbonus Program is available, are eligible for membership of the topbonus Program. The place of residence is deemed to be the member’s actual geographical centre of life (e.g. main postal address), evidence of which must be submitted at topbonus Ltd.’s request.

**1.2. Start of membership:** Membership begins upon receipt of the topbonus Card number by the member, which will be issued by topbonus Ltd.. Only one topbonus account is allowed per person. There is no legal claim to approval for membership.

Each member is given a personal password, which is used for personal identification, e.g. when logging into topbonus on the internet, when redeeming award miles, when checking the account balance, etc. To avoid misuse, each member must ensure that no unauthorized third party acquires knowledge of the password. topbonus Ltd. must be notified of any misuse immediately. topbonus Ltd.’s liability for any losses arising out of misconduct is limited in accordance with section 4.4. of these Conditions of Membership.

**2. topbonus benefits – collecting status/award miles**

The topbonus Program entitles the member to collect status/award miles in his or her topbonus account. This entitlement comes into effect with the start of membership. The topbonus Program distinguishes between two categories of miles: award miles and status miles.

Award miles can be collected to obtain an award under the topbonus Program. Status miles determine the status of members within the topbonus Program (see also section 2.6). If these topbonus Conditions of Membership or the topbonus communication media simply mention miles, the miles referred to are solely award miles.

Award miles can be collected in different ways, including via our topbonus partners such as oneworld airline partners, other airline partners, hotel partners, car rental partners and other topbonus partners. topbonus Ltd. has no direct influence on these companies and is therefore not responsible for the unlimited availability of the topbonus partners’ services (e.g. flights, hotel accommodation, hire cars, others) and proper performance of the contract. The General Terms and Conditions of Business of the relevant topbonus partner apply.

The relevant topbonus partner terms & conditions for accrual and redemption with any of the topbonus partners can be found at [www.airberlin.com/collect](http://www.airberlin.com/collect) or [www.airberlin.com/redeem](http://www.airberlin.com/redeem). Status miles for topbonus partner flights can only be credited if this possibility is explicitly authorised at [www.airberlin.com/collect](http://www.airberlin.com/collect)

**2.1 Collecting status/award miles, non-transferability:** Status/award miles can only be credited to a member’s personal topbonus account for services obtained by that member. This means e.g. one seat per flight, one car per

hired car contract, one room per hotel stay. The status/award miles cannot be credited to a member's topbonus account if the services were obtained by a person other than that member.

Award miles may only be used for the purposes set out in these topbonus Conditions of Membership or other topbonus communication media, in particular [www.airberlin.com/topbonus](http://www.airberlin.com/topbonus)

The topbonus account and the status/award miles balance are not transferable and cannot be converted into or paid out in cash. For flights which are eligible for the credit of miles, the name of the topbonus member on the boarding pass is decisive; for services provided by other topbonus partners the beneficiary of the service must be the owner of the topbonus Card, in order to credit the balance. The recipient of the invoice is not decisive in this respect.

If the service obtained entitles to earning credits in several loyalty schemes, miles of the topbonus Program can only be credited if no other credit within another loyalty programme is obtained for the same service, with the exception of the business points Program of Air Berlin PLC & Co. Luftverkehrs KG (hereinafter referred to as "airberlin"). Members are free to choose which scheme is to be credited.

**2.1.1 Flight:** The issuing of status/award miles may be limited to specific routes of airberlin and the topbonus airline partners. . The mile categories and number of status/award miles to be credited are based on the table of the relevant topbonus airline partner offering the flight under its own conditions of carriage (marketing carrier), prevailing at the time the service is taken up, provided that the airline partner is operating the flight itself or arranging for it to be operated by selected airlines. Further details on this can be viewed at [www.airberlin.com/partner](http://www.airberlin.com/partner).

**2.1.2. Hotels, hire cars:** The member's account is credited with award miles if the member is accommodated in a topbonus partner hotel or rents a car from a topbonus car hire partner at a qualifying rate. The hotel and car hire partners currently taking part in the topbonus Program are published online at [www.airberlin.com/partner](http://www.airberlin.com/partner). Some of the partnerships are limited to particular regions and/or restricted to sub-brands (e.g. hotel chains). Before obtaining services from partners, members should ask whether the specific hotel or car hire station will credit him or her with award miles. The level at which award miles are credited is published separately. The award miles are credited just once per stay and/or car rental. Several consecutive nights in the same hotel are deemed to be a single stay, irrespective of whether or not the stay in that hotel was interrupted. Car hire is deemed to be the renting of a vehicle for at least one day or the renting of several vehicles on several consecutive days at one or several branches of topbonus car hire partners at the same location.

**2.1.3. topbonus Credit Cards:** Cardholders may earn a certain number of award and – in relation to special promotions – status miles when using a topbonus Credit Card. Further information is set out in the General Terms and Conditions of Business for the relevant topbonus Credit Card. These can be viewed at [www.airberlin.com/topbonus](http://www.airberlin.com/topbonus)

**2.1.4. Other crediting of miles by partners:** Any options of accrual of topbonus award miles for services of other topbonus partners (e.g. the conversion of the partner program's bonus currency into topbonus miles) is published on [www.airberlin.com/partner](http://www.airberlin.com/partner) or on the website of the respective topbonus partner. If the currency of another bonus program is converted into topbonus miles, reconversion into the original currency is not permitted.

**2.2. Crediting process/non-credit:** For each scheduled flight operated by airberlin that is fully paid and boarded and/or for each fully paid scheduled flight of a topbonus airline partner as a marketing carrier in accordance with section 2.1.1., the topbonus account of the member is credited subject to sections 2.1 and 2.2 with award and/or, as the case may be, status miles. The same applies to the use of other topbonus partner services which entitle the member to mileage credit. Miles are credited automatically only if the topbonus member cites the correct topbonus card number or presents the topbonus card when booking and/or claiming the service covered by the topbonus program.

Miles not automatically registered can be credited within 12 months after the use of the airberlin flight service or within 6 months of use of the partner service, provided that the topbonus account already existed at the time the service was used. In the case of partner services, the topbonus partner must have already been a topbonus partner at the time the service was used. The topbonus member must regularly check his topbonus account to ensure that miles are credited correctly.

The crediting of miles not automatically registered can be applied for by either using the online form or by contacting the topbonus Service-Team, provided that the full original documentation issued in connection with the use of the service (e.g. the original boarding pass and copy of the passenger receipt for flights or the original hotel, car hire, or other invoices for the respective partner service) is submitted. No miles will be credited on the basis of unused, refunded, or expired vouchers and coupons. If the application is made using the online form at [www.airberlin.com/topbonus](http://www.airberlin.com/topbonus), the original documentation generally does not need to be sent in.

Status and award miles cannot be credited in the case of air tickets that are unused, have expired, or were acquired unlawfully or via industry discount tariffs (ID, IP, AD, GE, DG, PEP, etc.) and topbonus awards. Furthermore, status and award miles cannot be credited in the case of (free) flights, in particular with benefits from another airberlin bonus or card program (e.g. Counter Card, etc.) or for campaign tickets (e.g. in the form of flight vouchers) or certain special tariffs. The restrictions applicable to credit of status and/or award miles on flights offered by topbonus airline partners in accordance with section 2.1.1 are shown separately at [www.airberlin.com/partner](http://www.airberlin.com/partner).

**2.3. Account statement:** The member can check his or her account balance as well as details relating to individual transactions any time online at [www.airberlin.com/topbonus](http://www.airberlin.com/topbonus) by entering the user name and password. topbonus Ltd. sends out notification of the current balance in status/award miles to each member, although this may depend on the number of account movements since the previous notification. However, notification may no longer be sent out if in future topbonus Ltd. makes account statements available only online. Duplicate copies of statements cannot be issued. Complaints should be made within 30 days from receipt of the account statement or the initial publication of the balance in the online topbonus account.

**2.4. Redeeming award miles:** Award miles accumulated on a topbonus account may only be redeemed by the member registered for the respective topbonus account. The member may use the miles to book an award for third parties, provided that this opportunity is available. The availability of awards (e.g. award flights, upgrade awards, Companion Tickets) may vary according to date, season, and route. At certain times, individual awards are not available at all or are available only on a limited basis (limited quotas). Further information concerning the availability of awards and any applicable special terms can be viewed at [www.airberlin.com/redeem](http://www.airberlin.com/redeem) or may be obtained by calling the topbonus Service-Team.

The topbonus member can also redeem award miles to buy partner products and services offered independently by certain topbonus partners on separate business and delivery terms. When award miles are redeemed through these topbonus partners, it is their business and delivery terms that have priority. These can be viewed on the website of the relevant topbonus partner and may contain, for example, special rules concerning availability, transferability, or tax treatment of awards. The relevant topbonus partner is responsible for the due realisation and performance of the sale, whilst topbonus's liability, by derogation from section 4.4 and subject to other mandatory statutory provisions, is precluded.

Points from the business points Program of airberlin and miles from the topbonus Program may not be combined to redeem awards.

**2.4.1. Award flights:** As soon as the member has accumulated a sufficient number of award miles on his topbonus account for an award flight, he/she may book – subject to availability – an award flight, an upgrade award, or a Companion Ticket. The miles required for this depend on the award table (prevailing at the time of booking) of the airline partner operating the flight, which can be viewed at [www.airberlin.com/redeem](http://www.airberlin.com/redeem)

The award flight terms and conditions of the operating topbonus airline partner also apply.

Flights already booked cannot be changed into award flights subsequently. Award flights can only be booked exclusive of taxes and charges, unless otherwise stated in writing. A standby flight or a flight without a confirmed booking is not permitted for award bookings.

**2.4.2. Companion Ticket:** If a member books an award flight in Economy Class for a flight operated by airberlin (“principal ticket”), he/she may obtain an additional ticket for a companion at 50 % of the value in miles (“Companion Ticket”) exclusive of taxes, charges and fuel surcharges provided that the relevant quotas are available on the flight booked. Both award flights must be booked at the same time, either by telephone or online, and must be booked under the same conditions in terms of payment of taxes, charges and fuel surcharge, i.e. they must both be booked either inclusive or exclusive of taxes, charges and fuel surcharge. 100 % of taxes, charges and fuel surcharge applies and is not subject to any discount. The miles for both award flights are debited from the topbonus account of the principal passenger only and cannot be divided among different accounts. The topbonus member and his/her companion are obliged to fly together. If the principal ticket is cancelled, the Companion Ticket will also be cancelled – see also section 2.4.4. Rebooking is only possible if both award flights are rebooked at the same time and onto the same flight – see also section 2.4.4. A Companion Ticket cannot be booked for discounted award flights.

**2.4.3. Upgrade award to Business Class:** topbonus Ltd. offers topbonus members an upgrade option to business class on flights operated by airberlin subject to availability on the flight booked. Qualification is contingent on an Economy Class ticket on a long-haul flight (FlyDeal, FlyClassic or FlyFlex) or a confirmed award flight ticket. Further information as well as additionally applicable special terms and conditions can be viewed at [www.airberlin.com/redeem](http://www.airberlin.com/redeem). An upgrade reward is a reward that carries no entitlement to miles.

**2.4.4. Booking/rebooking of award flights:** Award flights, upgrades or Companion Tickets can only be rebooked within the award ticket validity term and within the same flight zone, subject to payment of the rebooking charges published at [www.airberlin.com/redeem](http://www.airberlin.com/redeem), provided that this option is established for the award in question and the relevant quotas are available for the selected flight. Flights are not transferable and name changes are not possible once they have been booked. Special conditions apply to the rebooking of award flights with topbonus airline partners; these can be viewed at [www.airberlin.com/redeem](http://www.airberlin.com/redeem)

If an award ticket is cancelled or not used, the redeemed miles will not be re-credited to the topbonus account. If the bonus currency of a topbonus partner is converted into topbonus miles, the miles cannot be reconverted into the original currency.

**2.4.5. Transfer of awards:** Award flights and upgrades on award flights or Companion Tickets can be booked for the member himself/herself or for any other person. Awards are not transferable once they have been booked. Any kind of sale, exchange, offer for auction or other transfer of awards or award documents to third parties is prohibited, unless the transfer is specifically authorised. In the same way, any arrangement for the purchase or sale of status/award miles, award flights or mile awards, as well as the unauthorised use of awards or award documents (all groups of cases in this clause are hereafter termed “misuse”) is prohibited. In the event of misuse for which the member is held to be responsible, topbonus Ltd. shall be entitled to issue extraordinary termination of membership in accordance with section 3.1 or to close the topbonus account in accordance with section 4.3. Any further claims for compensation by topbonus Ltd. are based on the statutory provisions.

**2.5. Expiry of status/award miles:** Unless otherwise published in the topbonus communication media, award miles that have not been redeemed expire after a period of 36 months after the end of the quarter in which they were collected. Status miles expire 12 months after the service for which they were earned has been obtained. The decisive date is the date of the service that gave rise to the status/award miles being credited.

**2.6. topbonus card types:** As part of the topbonus Program, various topbonus card types are issued which identify the status of the topbonus member. The respective status depends on the number of status miles

accumulated over a given period. As part of a special promotion, other conditions may apply for acquiring a specific status (e.g. the number of flight segments flown over a specific period).

Members residing in countries in which a topbonus payment card is offered can apply for a topbonus credit card and, if offered, a debit card (cf. section 2.1.3.) The topbonus credit card may be used instead of the topbonus Card. For further details, see the general terms and conditions for the relevant topbonus payment card, which can be viewed at [www.airberlin.com/topbonus](http://www.airberlin.com/topbonus)

Each status is associated with different benefits. Further information about card types and associated advantages can be viewed at [www.airberlin.com/topbonus](http://www.airberlin.com/topbonus)

The verification of whether the required minimum number of status miles has been attained or whether the conditions of a specific promotion for a particular status have been met takes place at the end of each month. The awarding of the status determined at that time always takes place at the beginning of the following month, valid for 12 full months.

The validity of the topbonus status cards is extended for a further 12 months provided that the member, in the previous 12 months before the status lapses, fulfils the conditions for the attainment of the same status. If the member does not fulfil the conditions, he/she will be relegated to the status for which he/she does fulfill the conditions and he/she will receive the topbonus Card for this status. If the member fulfills the conditions for the next status up, he/she will be sent the appropriate status card.

The validity of the topbonus payment cards may deviate from the validity of the relevant topbonus status. A topbonus payment card valid past the end of the status does not entitle to the relevant status benefits.

Each card remains the property of topbonus Ltd. or – in the case of a credit or debit card – the property of the issuing bank and must be returned on request. The topbonus Cards/payment cards are not transferrable and may not be used cumulatively.

**2.7. Status-dependent benefits:** Various benefits are linked to each topbonus Card. These special benefits are subject not only to these topbonus Conditions of Membership, but also to the special terms set out in the relevant topbonus communication media. Further details regarding current benefits together with the appropriate special conditions can be viewed on [www.airberlin.com/topbonus](http://www.airberlin.com/topbonus) topbonus Ltd. is entitled to offer/cancel further status-dependent benefits or discontinue benefits for topbonus cardholders, provided that such is deemed necessary. Equally these benefits may also be offered/cancelled by the topbonus partners offering the respective benefit. The nature, scope and period of these benefits are published online at [www.airberlin.com/topbonus](http://www.airberlin.com/topbonus) and can be viewed there.

### **3. Termination of Membership**

**3.1. Termination:** The member has the right to terminate his/her membership at any time without having to state any reasons for such action. The member may submit the notice of termination to the address set out in section 4.8. Subject to an earlier expiration according to section 2.5., award and/or status miles already collected can be used up until 6 months after due notice of termination has been received by topbonus Ltd.

topbonus Ltd. has the right to terminate the membership subject to 2 weeks' notice, without having to state reasons for such action. topbonus Ltd. may furthermore, without notice, terminate membership with immediate effect, provided that there are material grounds justifying termination without notice. Material grounds are presumed in particular in the case of a member's material breach of these topbonus Conditions of Membership or of airberlin's or topbonus partner's General Terms & Conditions of Carriage. This includes disregarding the instructions of personnel on board or in the exclusive airberlin or topbonus partner waiting areas or lounges as well as the provision of knowingly false information or the well-founded suspicion of misconduct in accordance



with section 4.3. After termination of membership the member is no longer entitled to collect status/award miles or to claim other topbonus benefits, with the exception of the provision detailed below:

In case of termination by topbonus Ltd. or discontinuation of the topbonus Program, award miles that have already been collected – unless they have expired earlier in accordance with section 2.5. and provided that they have been collected in accordance with the regulations – can be used up until 18 months after due notice of termination has been received by the member. Upon expiry of 18 months any status/award miles that remain will expire.

The statutory provisions apply if the contractual relationship is wound up after extraordinary notice of termination. In the event of justified, extraordinary notice by topbonus Ltd., the status/award miles expire with receipt of the notice of termination.

The member is obliged to return the topbonus Card held at that time without delay after termination of the contract.

**3.2. Discontinuation of the Program:** In the event of the topbonus Program being discontinued, topbonus Ltd. shall be entitled to issue due notice to terminate membership of the topbonus Program (see section 3.1.). The same applies in the event that the topbonus Program is replaced by another program. In this case the member is also entitled to give notice of termination in accordance with section 3.1., however, in such case miles already collected can be used up until 18 month after due notice of termination has been received by the member. The same applies if the operator and issuer of the topbonus Program should change.

#### **4. Miscellaneous**

**4.1. Taxes, charges:** All taxes (e.g. airport taxes), charges (e.g. security charges), duties and other surcharges (e.g. fuel surcharge) associated with the issuing or claiming of an award shall be borne by the member. In the case of certain awards, topbonus Ltd. may include the taxes and charges in the award or offer the option of paying for these taxes and charges with additional award miles. This only applies if this option is explicitly mentioned in connection with the relevant award. If the taxes and charges are not included or paid by award miles, the member shall be required to pay these on redemption of the award by using a method of payment accepted by airberlin.

**4.2. Benefits granted under the topbonus Program as non-cash benefits/flat-rate taxation:** Since the benefits granted under the topbonus Program are non-cash benefits within the meaning of article 3 section 38 EStG (German income tax act), they are subject to flat-rate taxation in accordance with article 37a EStG for topbonus members resident in Germany. The flat-rate taxation implemented by topbonus Ltd. is deemed to be full settlement of the payable tax (within Germany), which means that the person receiving the award does not have to declare the non-cash award in his or her personal income tax return if the German income tax act applies. The non-cash benefits on which flat-rate taxation is paid are not subject to social security contributions.

**4.3. Misconduct:** topbonus Ltd. reserves the right to freeze the topbonus account of a member suspected of improper conduct (e.g. the sale, exchange, auctioning, or other onward provision of awards or award documents to third parties, false declarations of identity, improperly acquired mileage credits in a breach of these Conditions of Membership or topbonus partner terms and conditions, etc.) until the facts are established. If the suspicion of misconduct cannot be dispelled, topbonus Ltd. retains the right to refuse to grant an award or redemption and/or cancel the improperly acquired miles and/or close the topbonus account.

Should a member use improperly acquired miles or engage in other unlawful conduct to collect awards, topbonus Ltd. also reserves the right to demand compensation in place of the mileage sum required to collect an award. topbonus Ltd. reserves such right also in the event of a negative mileage balance in the topbonus account due to other instances of member misconduct or conduct in breach of these topbonus Conditions of Membership or any other conditions that apply. In the event that transportation takes place with the use of an improperly obtained award, topbonus Ltd. reserves the right, in particular, to calculate the actual ticket price and charge this to the

member in breach of sections 2.4.5. and 4.3. in addition to invalidating the miles used. The member reserves the right to demonstrate that no losses or only minor losses occurred.

**4.4. Liability:** topbonus Ltd. and its agents bear unlimited liability towards the member in the event of intent or gross negligence or if a guarantee has been provided. Liability in the event of ordinary negligence is unlimited if there is injury to life, body or health. In the case of ordinary negligence of substantial contractual obligations (such as obligations, the fulfilment of which is a prerequisite for the proper implementation of this membership contract and on fulfilment of which the member regularly relies and may rely), liability is limited to material and financial damage to the value of the foreseeable typically occurring damage. Any further liability is excluded. This does not apply to claims based on the German product liability act.

**4.5. Data protection:** The personal data submitted by the member when applying for membership of the topbonus Program are processed and utilised in accordance with the applicable data protection regulations for purposes serving the implementation of the Program. This may include, amongst other acts, the transmission of personal data to topbonus partners, e.g. for the due crediting of miles. More information about the handling of personal data can be found under [www.airberlin.com/privacystatement](http://www.airberlin.com/privacystatement). Here, you will also find further information about declarations of consent and rights of objection and revocation.

**4.6. Loss, theft:** A handling fee of 5 EUR is charged for re-issuing a Card in case of theft, loss or damage. The member is free to prove that no handling fee or a lesser handling fee was incurred.

**4.7. Changes:** topbonus Ltd. retains the right to make amendments or supplements at any time to these topbonus Conditions of Membership, the topbonus partners, the card categories and the status benefits, the award tables for the accrual and redemption of status/award miles, the awards, or other procedures described in the topbonus Program documentation, provided that such is deemed necessary. The member will be informed of these changes and additions in writing. The member is therefore advised to log in at regular intervals to obtain the appropriate notification for his or her member profile. The change is deemed to be approved unless the member objects within 4 weeks of receiving notification of the change or addition. The period allowed for objections to be registered, as well as the consequences of silence are again expressly pointed out to the member in the notification that is sent out. If the member objects to a change or addition, topbonus Ltd. shall be entitled to issue due notice of extraordinary termination in accordance with section 3.1. The same applies in the event that topbonus Ltd. subsequently extends the topbonus Program to further co-issuers.

#### **4.8. Contact details:**

topbonus Ltd.  
Zweigniederlassung Berlin  
topbonus Service-Team  
Saatwinkler Damm 42-43  
13627 Berlin  
Germany  
e-mail: [service@topbonus.de](mailto:service@topbonus.de)

**4.9. Applicable law, severability clause:** This contract is governed by German law exclusively. If the member is not resident in Germany, the proper venue is Berlin (Germany). If the member is a resident of Germany, the proper venue is the court of jurisdiction for the defendant's place of residence or any other place for which there is legal jurisdiction.

If individual provisions are ineffective or impracticable in whole or in part, the effectiveness of the remaining provisions shall not be affected. In the case of a provision being ineffective or impracticable, this will be replaced by one that is effective or practicable and that is as close as possible to the economic intent of the ineffective or impracticable provision. In the event that the purpose of the contract cannot be achieved with

effective and practicable regulations, either party to the contract shall have the right to terminate the contract with immediate effect for reasonable cause.