# General Terms and Conditions for the Hotel Industry 2006 (AGBH 2006)

Version of 15 November 2006

Accommodation provider within the meaning of these terms: Luxescape GmbH, Feldweg 14, 9562 Himmelberg, Austria (telephone +43 664 3458434, email info@luxescape-ferienwohnungen.at).
These terms apply to all accommodation contracts for our holiday apartments. Under point 1.2, special agreements take precedence – in particular the conditions shown in the booking calendar and in your booking confirmation (e.g. arrival and departure times, deposit, cancellation conditions). Prices include statutory VAT; the local tourist tax is charged in addition.
This English text is a translation for your convenience. In the event of any discrepancy, the German version shall prevail.

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## § 1 Scope

1.1 These General Terms and Conditions for the Hotel Industry (hereinafter “AGBH 2006”) replace the previous ÖHVB (Austrian Hotel Contract Conditions) in the version of 23 September 1981.

1.2 The AGBH 2006 do not exclude special agreements. The AGBH 2006 are subsidiary to agreements made in individual cases.

## § 2 Definitions

2.1 Definitions:

| | |
|---|---|
| **"Accommodation provider"** | A natural or legal person who accommodates guests for payment. |
| **"Guest"** | A natural person who makes use of accommodation. As a rule, the guest is at the same time the contracting party. Persons travelling with the contracting party (e.g. family members, friends etc.) are also deemed guests. |
| **"Contracting party"** | A natural or legal person, domestic or foreign, who concludes an accommodation contract as a guest or for a guest. |
| **"Consumer" and "entrepreneur"** | These terms are to be understood within the meaning of the Austrian Consumer Protection Act 1979 as amended. |
| **"Accommodation contract"** | The contract concluded between the accommodation provider and the contracting party, the content of which is regulated in more detail below. |

## § 3 Conclusion of contract – deposit

3.1 The accommodation contract is concluded when the accommodation provider accepts the contracting party's order. Electronic declarations are deemed to have been received when the party for whom they are intended can retrieve them under normal circumstances and receipt occurs during the accommodation provider's announced business hours.

3.2 The accommodation provider is entitled to conclude the accommodation contract on condition that the contracting party pays a deposit. In this case, the accommodation provider is obliged to inform the contracting party of the required deposit before accepting the contracting party's written or oral order. If the contracting party agrees (in writing or orally) to the deposit, the accommodation contract is concluded when the accommodation provider receives the contracting party's declaration of consent to pay the deposit.

3.3 The contracting party is obliged to pay the deposit no later than 7 days (date of receipt) before the accommodation. The costs of the money transaction (e.g. transfer charges) are borne by the contracting party. For credit and debit cards, the respective conditions of the card companies apply.

3.4 The deposit is a part payment towards the agreed price.

## § 4 Beginning and end of accommodation

4.1 Unless the accommodation provider offers another time of occupancy, the contracting party is entitled to occupy the rented rooms from 4.00 p.m. on the agreed day ("day of arrival").

4.2 If a room is used for the first time before 6.00 a.m., the preceding night counts as the first overnight stay.

4.3 The contracting party must vacate the rented rooms by 12.00 noon on the day of departure. The accommodation provider is entitled to charge for an additional day if the rented rooms are not vacated on time.

## § 5 Withdrawal from the accommodation contract – cancellation fee

### Withdrawal by the accommodation provider

5.1 If the accommodation contract provides for a deposit and the contracting party has not paid the deposit on time, the accommodation provider may withdraw from the accommodation contract without granting a period of grace.

5.2 If the guest has not arrived by 6.00 p.m. on the agreed day of arrival, there is no obligation to provide accommodation unless a later time of arrival has been agreed.

5.3 If, on the other hand, the contracting party has paid a deposit (see 3.3), the premises remain reserved until 12.00 noon on the day following the agreed day of arrival at the latest. In the case of advance payment for more than four days, the obligation to provide accommodation ends at 6 p.m. on the fourth day, the day of arrival being counted as the first day, unless the guest notifies a later day of arrival.

5.4 Up to 3 months before the contracting party's agreed day of arrival at the latest, the accommodation contract may be terminated by the accommodation provider by unilateral declaration for objectively justified reasons, unless otherwise agreed.

### Withdrawal by the contracting party – cancellation fee

5.5 Up to 3 months before the guest's agreed day of arrival at the latest, the accommodation contract may be terminated by the contracting party by unilateral declaration without payment of a cancellation fee.

5.6 Outside the period specified in § 5.5, withdrawal by unilateral declaration of the contracting party is only possible on payment of the following cancellation fees:

– up to 1 month before the day of arrival: 40 % of the total package price;

– up to 1 week before the day of arrival: 70 % of the total package price;

– in the last week before the day of arrival: 90 % of the total package price.

| up to 3 months | 3 months to 1 month | 1 month to 1 week | In the last week |
|---|---|---|---|
| no cancellation fees | 40 % | 70 % | 90 % |

### Obstacles to arrival

5.7 If the contracting party cannot appear at the accommodation establishment on the day of arrival because all means of travel are impossible due to unforeseeable extraordinary circumstances (e.g. extreme snowfall, floods etc.), the contracting party is not obliged to pay the agreed price for the days of arrival.

5.8 The obligation to pay for the booked stay revives from the time arrival becomes possible, if arrival becomes possible again within three days.

## § 6 Provision of substitute accommodation

6.1 The accommodation provider may provide the contracting party or the guests with adequate substitute accommodation (of the same quality) if this is reasonable for the contracting party, especially if the deviation is minor and objectively justified.

6.2 An objective justification exists, for example, if the room (rooms) has (have) become unusable, guests already accommodated extend their stay, there is an overbooking or other important operational measures necessitate this step.

6.3 Any additional expenses for the substitute accommodation are borne by the accommodation provider.

## § 7 Rights of the contracting party

7.1 By concluding an accommodation contract, the contracting party acquires the right to the customary use of the rented rooms and of those facilities of the accommodation establishment that are normally accessible to guests for use without special conditions, and to the customary service. The contracting party shall exercise his rights in accordance with any hotel and/or guest guidelines (house rules).

## § 8 Obligations of the contracting party

8.1 The contracting party is obliged to pay, at the latest at the time of departure, the agreed price plus any additional amounts incurred as a result of separate use of services by him and/or the guests accompanying him, plus statutory value added tax.

8.2 The accommodation provider is not obliged to accept foreign currencies. If the accommodation provider accepts foreign currencies, these will, as far as practicable, be accepted in payment at the daily exchange rate. Should the accommodation provider accept foreign currencies or cashless means of payment, the contracting party bears all related costs, such as enquiries with credit card companies, telegrams, etc.

8.3 The contracting party is liable to the accommodation provider for any damage caused by him or the guest or other persons who receive services of the accommodation provider with the knowledge or consent of the contracting party.

## § 9 Rights of the accommodation provider

9.1 If the contracting party refuses to pay the stipulated price or is in arrears with it, the accommodation provider is entitled to the statutory right of retention pursuant to § 970c ABGB (Austrian Civil Code) and the statutory lien pursuant to § 1101 ABGB on the items brought in by the contracting party or the guest. The accommodation provider is further entitled to this right of retention or lien to secure his claims arising from the accommodation contract, in particular for board, other expenses incurred on behalf of the contracting party and any claims for compensation of any kind.

9.2 If service is requested in the contracting party's room or at unusual times of day (after 8.00 p.m. and before 6.00 a.m.), the accommodation provider is entitled to charge a special fee for this. This special fee must, however, be shown on the room price list. The accommodation provider may also refuse these services for operational reasons.

9.3 The accommodation provider is entitled to invoice or issue an interim invoice for his services at any time.

## § 10 Obligations of the accommodation provider

10.1 The accommodation provider is obliged to provide the agreed services to an extent corresponding to his standard.

10.2 Examples of special services of the accommodation provider that must be shown in prices and are not included in the accommodation price are:

a) special accommodation services that may be invoiced separately, such as the provision of lounges, sauna, indoor pool, swimming pool, solarium, garage parking etc.;

b) a reduced price is charged for the provision of extra beds or children's beds.

## § 11 Liability of the accommodation provider for damage to items brought in

11.1 The accommodation provider is liable for the items brought in by the contracting party in accordance with §§ 970 et seq. ABGB. The accommodation provider is only liable if the items have been handed over to the accommodation provider or to persons authorised by the accommodation provider, or have been brought to a place designated by them or intended for this purpose. Unless the accommodation provider succeeds in proving otherwise, the accommodation provider is liable for his own fault or the fault of his staff and of persons coming and going. Pursuant to § 970 (1) ABGB, the accommodation provider is liable at most up to the amount laid down in the Federal Act of 16 November 1921 on the liability of innkeepers and other entrepreneurs, as amended. If the contracting party or the guest does not immediately comply with the accommodation provider's request to deposit his items in a special storage place, the accommodation provider is released from any liability. The amount of any liability of the accommodation provider is limited to a maximum of the sum insured under the respective accommodation provider's liability insurance. Any fault of the contracting party or the guest shall be taken into account.

11.2 The accommodation provider's liability for slight negligence is excluded. If the contracting party is an entrepreneur, liability is also excluded for gross negligence. In this case, the contracting party bears the burden of proof for the existence of fault. Consequential or indirect damage and lost profits will not be compensated under any circumstances.

11.3 For valuables, money and securities, the accommodation provider is only liable up to the amount of currently € 550.00. The accommodation provider is only liable for damage exceeding this amount if he has accepted these items for safekeeping with knowledge of their nature, or if the damage was caused by his own fault or the fault of one of his staff. The limitation of liability pursuant to 12.1 and 12.2 applies accordingly.

11.4 The accommodation provider may refuse to keep valuables, money and securities if they are considerably more valuable items than guests of the accommodation establishment concerned usually deposit.

11.5 In any case of accepted safekeeping, liability is excluded if the contracting party and/or guest does not notify the accommodation provider of the damage immediately after becoming aware of it. Moreover, these claims must be asserted in court within three years of the contracting party or guest becoming aware or being able to become aware of them; otherwise the right expires.

## § 12 Limitations of liability

12.1 If the contracting party is a consumer, the accommodation provider's liability for slight negligence is excluded, with the exception of personal injury.

12.2 If the contracting party is an entrepreneur, the accommodation provider's liability for slight and gross negligence is excluded. In this case, the contracting party bears the burden of proof for the existence of fault. Consequential damage, non-material damage or indirect damage and lost profits will not be compensated. In any case, the damage to be compensated is limited to the amount of the reliance interest.

## § 13 Animals

13.1 Animals may only be brought into the accommodation establishment with the prior consent of the accommodation provider and, where applicable, for a special fee.

13.2 A contracting party who brings an animal is obliged to keep or supervise this animal properly during his stay, or to have it kept or supervised by suitable third parties at his own expense.

13.3 A contracting party or guest who brings an animal must have appropriate animal liability insurance or private liability insurance that also covers possible damage caused by animals. Proof of the relevant insurance must be provided at the request of the accommodation provider.

13.4 The contracting party or his insurer are jointly and severally liable to the accommodation provider for damage caused by animals brought along. This damage also includes in particular any compensation that the accommodation provider has to pay to third parties.

13.5 Animals are not permitted in lounges, common rooms, restaurant areas and wellness areas.

## § 14 Extension of accommodation

14.1 The contracting party has no right to have his stay extended. If the contracting party announces his wish to extend the stay in good time, the accommodation provider may agree to the extension of the accommodation contract. The accommodation provider is under no obligation to do so.

14.2 If the contracting party cannot leave the accommodation establishment on the day of departure because all means of departure are closed or unusable due to unforeseeable extraordinary circumstances (e.g. extreme snowfall, floods etc.), the accommodation contract is automatically extended for the period during which departure is impossible. A reduction of the price for this period is only possible, if at all, if the contracting party cannot make full use of the services offered by the accommodation establishment as a result of the extraordinary weather conditions. The accommodation provider is entitled to demand at least the price that corresponds to the price usually charged in the off-season.

## § 15 Termination of the accommodation contract – early termination

15.1 If the accommodation contract was concluded for a fixed period, it ends when that period expires.

15.2 If the contracting party leaves early, the accommodation provider is entitled to demand the full agreed price. The accommodation provider will deduct what he saves as a result of his services not being used or what he has received by letting the booked rooms to others. A saving only exists if the accommodation establishment is fully booked at the time the rooms booked by the guest are not used and the rooms can be let to other guests as a result of the contracting party's cancellation. The contracting party bears the burden of proof for the saving.

15.3 The contract with the accommodation provider ends upon the death of a guest.

15.4 If the accommodation contract was concluded for an indefinite period, the contracting parties may terminate the contract by 10.00 a.m. on the third day before the intended end of the contract.

15.5 The accommodation provider is entitled to terminate the accommodation contract with immediate effect for good cause, in particular if the contracting party or the guest

a) makes considerably detrimental use of the premises, or by inconsiderate, offensive or otherwise grossly improper behaviour makes living together unbearable for the other guests, the owner, his staff or third parties living in the accommodation establishment, or is guilty of a punishable act against property, morality or physical safety towards these persons;

b) is afflicted with a contagious disease or an illness extending beyond the period of accommodation, or otherwise becomes in need of care;

c) does not pay the invoices presented when due within a reasonably set period (3 days).

15.6 If performance of the contract becomes impossible due to an event to be regarded as force majeure (e.g. natural disasters, strikes, lockouts, official orders etc.), the accommodation provider may terminate the accommodation contract at any time without observing a period of notice, unless the contract is already deemed terminated by law or the accommodation provider is released from his obligation to provide accommodation. Any claims of the contracting party for damages etc. are excluded.

## § 16 Illness or death of the guest

16.1 If a guest falls ill during his stay at the accommodation establishment, the accommodation provider will arrange medical care at the guest's request. If there is imminent danger, the accommodation provider will arrange medical care even without a specific request from the guest, in particular if this is necessary and the guest is unable to do so himself.

16.2 As long as the guest is unable to make decisions or the guest's relatives cannot be contacted, the accommodation provider will arrange medical treatment at the guest's expense. The scope of these care measures ends, however, at the time when the guest can make decisions or the relatives have been notified of the illness.

16.3 The accommodation provider has claims for compensation against the contracting party and the guest or, in the event of death, against their legal successors, in particular for the following costs:

a) outstanding medical costs, costs of patient transport, medicines and medical aids

b) room disinfection that has become necessary,

c) linen, bed linen and bedding that have become unusable, or otherwise for the disinfection or thorough cleaning of all these items,

d) restoration of walls, furnishings, carpets etc., insofar as these were soiled or damaged in connection with the illness or death,

e) room rent, insofar as the premises were used by the guest, plus any days on which the rooms cannot be used due to disinfection, clearing or similar,

f) any other damage incurred by the accommodation provider.

## § 17 Place of performance, place of jurisdiction and choice of law

17.1 The place of performance is the place where the accommodation establishment is located.

17.2 This contract is subject to Austrian formal and substantive law, excluding the rules of private international law (in particular the Austrian IPRG and the Rome Convention, EVÜ) and the UN Convention on Contracts for the International Sale of Goods.

17.3 In transactions between entrepreneurs, the exclusive place of jurisdiction is the registered office of the accommodation provider, although the accommodation provider is also entitled to assert his rights before any other court having local and subject-matter jurisdiction.

17.4 If the accommodation contract was concluded with a contracting party who is a consumer and has his domicile or habitual residence in Austria, actions against the consumer may only be brought at the consumer's domicile, habitual residence or place of employment.

17.5 If the accommodation contract was concluded with a contracting party who is a consumer and has his domicile in a member state of the European Union (with the exception of Austria), Iceland, Norway or Switzerland, the court having local and subject-matter jurisdiction for the consumer's domicile has exclusive jurisdiction for actions against the consumer.

## § 18 Miscellaneous

18.1 Unless the above provisions provide otherwise, a time limit begins to run upon delivery of the document setting the time limit to the contracting party who must observe the time limit. When calculating a time limit determined in days, the day on which the event or occurrence falls from which the beginning of the time limit is to be determined is not counted. Time limits determined in weeks or months refer to the day of the week or month which, by its name or number, corresponds to the day from which the time limit is to be counted. If this day is missing in the month, the last day of that month is decisive.

18.2 Declarations must have reached the other contracting party by the last day of the time limit (midnight).

18.3 The accommodation provider is entitled to set off his own claims against claims of the contracting party. The contracting party is not entitled to set off his own claims against claims of the accommodation provider unless the accommodation provider is insolvent or the contracting party's claim has been established by a court or acknowledged by the accommodation provider.

18.4 In the event of gaps in the provisions, the relevant statutory provisions apply.

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